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4-191A016

ALLEN H. HARRISON, JR. No.

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Date JUL 9 1984

Fee \$ 20.00

JUL 9 1984 12 00 PM

ICC Washington, D. C.

July 9 1984 INTERSTATE COMMERCE COMMISSION

184 NAC Aluminum Covered Hopper Cars

Dear Mr. Bayne:

On behalf of Barclays Bank International Limited, I submit for filing and recording under 49 U.S.C. § 11303(a) and the regulations promulgated thereunder, the two enclosed executed counterparts of a secondary document entitled "Amended and Restated Participation Agreement and Amendment."

The aforesaid document amends the Conditional Sale Agreement, and the Lease recorded with the Interstate Commerce Commission on August 14, 1981 at 10:25 a.m. under Recordation Nos. 13221 and 13221-B, respectively, and the instant document should be recorded under Recordation No. 13221 under the next available letter, which letter we believe will be -D.

The names and addresses of the parties to this transaction are the same as those in the above-mentioned Conditional Sale Agreement, Lease, and related Assignments, as heretofor recorded, except Morgan Guaranty Trust Company of New York, Investor, is replaced by:

Barclays Bank International Limited - as  
Permanent Investor  
1800 First Atlanta Tower  
Two Peachtree Street  
Atlanta, Georgia 30383

RECEIVED

JUL 9 11 54 AM '84

Please cross index this filing under Barclays Bank International Limited (The \$10.00 cross-indexing fee is enclosed, as noted below).

The equipment covered in this transaction is the same covered in the Conditional Sale Agreement and the Lease under Recordation Nos. 13221 and 13221-B, respectively.

Enclosed is a check of this firm in the amount of \$10.00 to pay the recording fee for the instant document and \$10.00 to pay for the cross-indexing requested above.

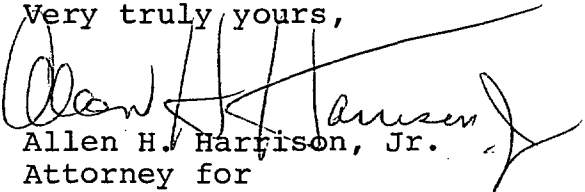
*Allen H. Harrison*  
I.C.C.  
FEE OPERATION BR.  
*Amended*

A short summary of the document to appear in the Index is as follows:

"Amends CSA and Lease, no change in equipment"

Once the filing has been made, please keep for your file one of the two stamped counterparts, and return to bearer the remaining stamped counterpart, together with the fee receipt, the letter from the ICC acknowledging the filing, and the two extra copies of this letter of transmittal.

Very truly yours,

  
Allen H. Harrison, Jr.  
Attorney for  
Barclays Bank International  
Limited  
for the purpose of this filing

Honorable James H. Bayne  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Enclosures

AHH/iw

BY HAND

**Interstate Commerce Commission**  
Washington, D.C. 20423

7/9/84

**OFFICE OF THE SECRETARY**

Allen H. Harrison, Jr.  
Wilmer Cutler & Pickering  
1666 K. Street, N.W.  
Washington, D.C. 20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/9/84 at 12:00pm and assigned re-  
recording number(s). 13221-D & 13369-D

Sincerely yours,



Secretary

Enclosure(s)

RECORDATION NO. 13281 A  
Filed 1125

JUL 9 1984 -12 00 PM

INTERSTATE COMMERCE COMMISSION

AMENDED AND RESTATED PARTICIPATION AGREEMENT AND AMENDMENT

AMONG

BADISCHE CORPORATION,

Lessee,

LA SALLE NATIONAL BANK,

Agent

GENERAL ELECTRIC CREDIT CORPORATION,

Owner,

EXCHANGE NATIONAL BANK OF CHICAGO,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement  
dated as of the date hereof with  
the Owner,

MORGAN GUARANTY TRUST COMPANY OF NEW YORK,

Investor,

and

BARCLAYS BANK INTERNATIONAL LIMITED, Atlanta Agency,

Permanent Investor

Dated as of July 1, 1984

Floating Rate Conditional Sales Indebtedness  
Due January 1, 2007

[Covering 184 NAC Aluminum Covered Hopper Cars]

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AMENDED AND RESTATED PARTICIPATION AGREEMENT AND AMENDMENT ("Agreement") dated as of July 1, 1984, among BADISCHE CORPORATION, a Delaware corporation ("Lessee"), LA SALLE NATIONAL BANK, a national banking association ("Agent"), GENERAL ELECTRIC CREDIT CORPORATION, a New York corporation ("Owner"), EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, acting not in its individual capacity but solely as trustee ("Trustee") under a Trust Agreement dated as of June 1, 1981 with the Owner ("Trust Agreement"), MORGAN GUARANTY TRUST COMPANY OF NEW YORK ("Investor"), and BARCLAYS BANK INTERNATIONAL LIMITED, Atlanta Agency (the "Permanent Investor") and, together with its successors and assigns, ("Permanent Investors").

WHEREAS the parties hereto (other than the Permanent Investor) have entered into a Participation Agreement dated as of June 1, 1981 (the "Participation Agreement") providing for the purchase of 184 aluminum covered hopper cars (the "Equipment"), as described in Annex B to the CSA (as hereinafter defined), and their lease to the Lessee;

WHEREAS pursuant to the Trust Agreement and the authorization and direction of the Owner, the Trustee has purchased the Equipment from North American Car Corporation ("NAC") pursuant to a Conditional Sale Agreement ("CSA") dated as of June 1, 1981; and NAC has retained a security interest in the units of Equipment constructed, sold and delivered by it pursuant to the CSA until the Trustee fulfills its obligations under the CSA;

WHEREAS the Lessee has leased from the Trustee all the units of the Equipment delivered and accepted under the CSA, pursuant to a Lease of Railroad Equipment ("Lease") dated as of June 1, 1981;

WHEREAS the Investor has furnished 63.23% of the cost of the Equipment by investing in the CSA Indebtedness (as defined in Section 4.3(b) of the CSA), and the owner has furnished 36.77% of the costs of such Equipment by making funds available to the Trustee under the Trust Agreement;

WHEREAS the Lessee has agreed to and has indemnified the Owner pursuant to an Indemnity Agreement ("Indemnity Agreement") dated as of June 1, 1981, between the Lessee and the Owner, against certain losses, liabilities and expenses incurred by or assessed against the Owner;

WHEREAS the security interest of NAC in the Equipment has been assigned to the Agent, acting on behalf of the Investor, pursuant to an Agreement and Assignment dated as of June 1, 1981 ("CSA Assignment"), and the Lease has been assigned to the Agent pursuant to an Assignment of Lease and Agreement ("Lease Assignment") dated as of June 1, 1981, until the Trustee fulfills all its obligations under the CSA; and the Lessee has acknowledged and consented thereto pursuant to the Consent and Agreement dated as of June 1, 1981 ("Consent");

WHEREAS the CSA, the CSA Assignment, the Lease and the Lease Assignment were filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on August 14, 1981, at 10:25 a.m., recordation numbers 13221, 13221-A, 13221-B, and 13221-C, respectively;

WHEREAS the Permanent Investor proposes to acquire the Investor's interests in the Outstanding CSA Indebtedness (as hereinafter defined), and in connection therewith, the interest rate on the CSA Indebtedness will be changed to the Floating Rate as defined in Section 4.4 of the CSA, as amended by Paragraph 16 hereof;

WHEREAS the parties hereto desire to amend and restate the Participation Agreement and amend the CSA and the Lease as herein set forth;

NOW, THEREFORE, in consideration of the agreements and the covenants hereinafter contained, the parties hereby agree as follows:

1. The Trustee and the Owner have entered into the Trust Agreement, and the Trustee has entered into the CSA and pursuant thereto has purchased the units of Equipment described in Annex B to the CSA having an aggregate Purchase Price of \$14,298,399.22.

The Lessee has assigned, transferred, and set over unto the Trustee and its successors and assigns all the right, title and interest of the Lessee in and to the Equipment and to any contracted arrangements with NAC insofar as such arrangements relate to the Equipment.

The parties hereto agree that, subject to the payment by the Permanent Investor of the amounts to be paid by it

pursuant to Paragraph 2 hereof, from and after the Deposit Date (as hereinafter defined) (a) the Investor hereby transfers and assigns to the Permanent Investor all its right, title and interest in and to the CSA Indebtedness, (b) the Participation Agreement shall be amended and restated and the CSA and the Lease shall each be amended as set forth herein and (c) unless the context otherwise requires, the terms "CSA" and "Lease", as used in this Agreement, the CSA and the Lease, the Trust Agreement, the CSA Assignment, the Lease Assignment, the Consent and the Indemnity Agreement (collectively, "Participation Documents"), shall mean, respectively, the CSA and the Lease, each as amended hereby, and the term "Participation Agreement" as used in any of the Participation Documents, other than this Agreement, shall mean this Agreement. By its execution and delivery of this Agreement, the Owner authorizes the Trustee to execute and deliver this Agreement and to carry out its terms.

2. Subject to the terms and conditions hereof, the Permanent Investor will pay to the Agent, in immediately available funds, not later than 11:00 a.m., Chicago time, on July 9, 1984 ("Deposit Date"), an amount equal to \$8,271,319.65. All deposits to be made hereunder by the Permanent Investor with the Agent shall be paid to the Agent at the following address and shall be accompanied by the following



information: La Salle National Bank, Corporate Trust Division, 135 La Salle Street, Chicago, Illinois 60690 for credit to the account of Badische Corporation Lease Financing Trust Account No. 61-5620-50-7.

Upon payment to the Agent of the amount required to be paid by the Permanent Investor pursuant to this Paragraph 2 on the Deposit Date, the Agent will execute and deliver to such Permanent Investor (or, upon the written request of such Permanent Investor, to the nominee or nominees of such Permanent Investor), a certificate or certificates of interest with respect to such payment, substantially in the form annexed hereto as Appendix I, containing the appropriate information and dated the Deposit Date.

Subject to the terms and conditions hereof, upon payment to the Agent on the Deposit Date of the amount to be paid by the Permanent Investor pursuant hereto, the Agent will pay to the Investor an amount (the "Take Out Amount") equal to the sum of the aggregate unpaid CSA Indebtedness represented by the certificates of interest theretofore delivered to the Investor under the Participation Agreement (the "Outstanding CSA Indebtedness"); and the Investor simultaneously with the payment to it of such amount, will surrender such certificates to the Agent for cancellation; it being understood that the Trustee will pay to the Investor on the Deposit Date accrued and

unpaid interest to the Deposit Date on the aggregate amount of Outstanding CSA Indebtedness transferred by the Investor at the rates provided in its certificates of interest (the "Debt Rate" as defined therein being deemed to be the Debt Rate as defined in the CSA prior to its amendment pursuant to this Agreement) and the Investor agrees to look solely to the Trustee for such payment on the Deposit Date.

The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Atlanta, Georgia, Chicago, Illinois, or New York, New York, are authorized or obligated to <sup>or etc</sup> remain closed. All interest under this Agreement (including payments made pursuant to Paragraph 2 hereof) shall be calculated on the basis of a 360-day year for the actual number of days elapsed. At least eight days prior to each date on which interest is due on the CSA Indebtedness pursuant to Section 4.4 of the CSA, the Permanent Investor will give notice to the Owner, the Lessee and the Agent of the amount of interest due on such interest payment date and the calculation thereof, and at least five days prior to each rental payment date under the Lease, the Owner will advise the Lessee and the Agent of the amount of rent due pursuant to Section 3.1 of the Lease on such rental payment date and the calculation thereof.

As soon as practicable after delivery to the Permanent Investor of the certificate or certificates of interest, the Agent will also deliver to such Permanent Investor a schedule of payments reflecting the dates and amounts of principal payments to be made in respect of such certificate or certificates. The Permanent Investor, simultaneously with the final payment to it of all amounts payable in respect of such certificate or certificates, will surrender such certificate or certificates to the Agent.

Pursuant to the CSA Assignment the Agent has acquired from NAC all its right, security title and interest under the CSA, except as specifically excepted by the CSA Assignment. Pursuant to the Lease Assignment, the Agent has acquired for security purposes the rights of the Trustee in, to and under the Lease, except as specifically excepted by the Lease Assignment.

The Participation Documents are hereby approved by the Permanent Investor. Except as herein provided, the Agent will not enter into or consent to any modification or supplement to, or waiver with respect to, any of the Participation Documents that could adversely affect the interest of the Permanent Investors without the prior written approval of Permanent Investors holding a majority of the aggregate CSA Indebtedness then outstanding, it being agreed

that changes in the provisions of the Lease which are not intended or necessary to satisfy the obligations of the Trustee under the CSA shall not be deemed to affect adversely the interests of the Permanent Investors. In determining whether the holders of a requisite percentage of the CSA Indebtedness have joined in any request, consent, waiver, approval or amendment under this Agreement, the Agent shall disregard any CSA Indebtedness known by it to be held by the Lessee, the Owner, or their affiliates.

The Agent will hold the moneys deposited with it pursuant hereto and any interest thereon, the rights under the CSA acquired under the CSA Assignment and the security title to the Equipment following its delivery and acceptance thereunder, and the security interest in the Lease and any payments received by it pursuant to the Lease Assignment, in trust for the benefit of the Permanent Investors. The obligations of the Agent hereunder as such titleholder and with respect to the payments to the Permanent Investors to be made by the Agent are only those expressly set forth herein.

All transactions pursuant hereto which shall occur on the Deposit Date shall be deemed for purposes of this Agreement, the CSA, the Lease and the Trust Agreement to have occurred simultaneously.

3. The Lessee represents and warrants:

(a) It is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware and is duly qualified and authorized to do business and is in good standing in every other jurisdiction where the failure to so qualify would materially and adversely affect its operations, property, assets or condition, financial or otherwise, or the transactions contemplated by the Participation Documents.

(b) It has the full corporate power and authority and legal right to carry on its business as now conducted, and is duly authorized and empowered to execute and deliver this Agreement, the Lease, the Consent and the Indemnity Agreement ("Lessee Documents") and to fulfill and comply with the terms, conditions and provisions thereof.

(c) The Lessee Documents have been duly authorized, executed and delivered by it, and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitute legal, valid and binding instruments, enforceable in accordance with their terms.

(d) There are no actions, suits or proceedings, whether or not purportedly on its behalf, pending or (to its knowledge) threatened against or affecting it or any

of its property or rights, at law or in equity or before any commission or other administrative agency which, if determined adversely to it, would materially and adversely affect its condition, financial or otherwise, or its ability to perform its obligations under the Lessee Documents, and it is not in default with respect to any order or decree of any court or government commission, agency or instrumentality, the noncompliance with which would materially and adversely affect the operations, property, assets or condition, financial or otherwise, of the Lessee or the transactions contemplated by the Participation Documents.

(e) Neither the execution and delivery of the Lessee Documents nor the consummation of the transactions therein contemplated nor the fulfillment of nor the compliance with the terms and provisions thereof will conflict with or result in a breach of any of the terms, conditions or provisions of its Certificate of Incorporation or its By-laws (in each case as amended to date) or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which it is a party or by which it or its property may be bound, or constitute (with the giving of notice or the lapse of time or both) a default thereunder, or, pursuant to the provisions thereof, result in the

creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any of its property or upon the Equipment.

(f) It is not in default, and no event has occurred which, with the giving of notice or the lapse of time, or both, would be a default, under any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, agreement or other instrument evidencing the borrowing of money to which it is a party or by which it or its property may be bound.

(g) Neither the execution and delivery by it of the Lessee Documents nor the consummation by it of the transactions therein contemplated nor the fulfillment of nor the compliance with the terms and provisions thereof will conflict with or will result in a breach of any of the terms, conditions or provisions of any law or any regulation, order, injunction or decree of any court or governmental instrumentality or arbitrator binding on it, its operations or its properties.

(h) On or before the Deposit Date, this Agreement will have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. Such filing (together with the prior filing of the CSA, the CSA Assignment, the Lease and the Lease Assignment) will

protect the Agent's and the Trustee's interests in and to the units of Equipment and the Lease and no other filing (or giving of notice) is necessary in order to protect the interests of the Agent and the Trustee under the CSA, the CSA Assignment, the Lease or the Lease Assignment or in the units of Equipment in the United States of America or in any state of the United States or the District of Columbia.

(i) It is not entering into the Lessee Documents or any other transaction contemplated thereby directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it or the Owner, NAC, the Investor, the Permanent Investor or the Trustee in its individual capacity is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA"), and it will not sublease the Equipment subject to the Lease directly or indirectly to or in connection with any arrangement by it with any person which is at the time a party in interest with respect to the employee benefit plan the assets of which were used by the Owner or the Permanent Investor in making their investments pursuant to this Agreement, all within the meaning of ERISA.



(j) The Equipment will be used in interstate commerce.

(k) No authorization, consent or approval is required from the Interstate Commerce Commission or any other governmental or public body or authority of the United States or any of the states thereof or the District of Columbia in connection with the execution by it of the Lessee Documents or the fulfillment of or the compliance with the terms, conditions and provisions thereof by it or arising from the possession or use of the Equipment.

(l) It has not directly or indirectly taken any action and will not take any action the effect of which would bring the sale of the CSA Indebtedness or the investment by the Owner within the provisions of Section 5 of the Securities Act of 1933 or the registration provisions of the securities laws of any state, or would require the qualification of the CSA or any other instrument or agreement contemplated hereby or thereby under the Trust Indenture Act of 1939. It has not and will not offer any of the CSA Indebtedness or other securities to or solicit any offer to buy any thereof or approach or negotiate with any person other than banks as defined in Section 3(a)(2) of the Securities Act of 1933, insurance companies as defined in Section 2(13) of the

Securities Act of 1933 and other similar institutions that would qualify as an accredited investor pursuant to Regulation D under the Securities Act of 1933. It will not offer any of the CSA Indebtedness or other securities to or solicit any offer to buy any thereof from any other person or approach or negotiate with any other person in respect thereof so as to bring the sale of the CSA Indebtedness or the investment by the Owner within the provisions of Section 5 of said Securities Act or the registration provisions of any such state securities law, or would require such qualification under the Trust Indenture Act of 1939.

(m) It has filed all foreign, Federal, state and local tax returns which are required to be filed and has paid or made provisions for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by it, other than taxes which are being contested in good faith and which in the aggregate do not involve material amounts.

(n) It has furnished to the Permanent Investor and the Owner its Consolidated Balance sheets as of December 31, 1982, and December 31, 1983, and the related Consolidated Statements of Income for the respective years then ended. Such consolidated financial statements are in

accordance with the books and records of the Lessee and have been prepared in accordance with generally accepted accounting principles. The financial statements present fairly the financial condition of the Lessee at such dates and the results of its operations for such periods. There has not been any materially adverse change in the operations, property, assets or condition, financial or otherwise, of the Lessee since December 31, 1983.

(o) It has not directly or indirectly authorized or employed agents, brokers, finders or otherwise (other than Tiger Financial Services, Inc. and Tiger Capital Corporation) in connection with the placement of the CSA Indebtedness or the leasing of the Equipment pursuant to the Lease.

4. The Owner represents and warrants:

(a) It is a duly organized and validly existing corporation in good standing under the laws of the State of New York.

(b) It has the full corporate power, authority and legal right to carry on its business as now conducted and is duly authorized and empowered to execute and deliver this Agreement, the Indemnity Agreement and the Trust Agreement (the "Owner Documents") and to fulfill and comply with the terms, conditions and provisions thereof.

(c) The Owner Documents have been duly authorized, executed and delivered by it and, assuming due authorization, execution and delivery thereof by the other party or parties thereto, constitute legal, valid and binding instruments of the Owner, enforceable against the Owner in accordance with their terms.

(d) It has made its investment in the Equipment (pursuant to the Trust Agreement and this Agreement) with its general assets and not directly or indirectly with the assets of or in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan), all within the meaning of ERISA. It covenants that it will not transfer its interest acquired pursuant to this Agreement (and the Trust Agreement) directly or indirectly to or in connection with any arrangement or understanding by it in any way involving any employee benefit plan with respect to which it or the Lessee, NAC, the Permanent Investor, the Investor or the Trustee in its individual capacity is at the time a party in interest, all within the meaning of ERISA.

(e) It has not directly or indirectly offered or sold any interest in the CSA Indebtedness or other securities or beneficial interests in the Equipment to any

other person. It will not offer any other securities or beneficial interest in the Equipment to or solicit any offer to buy any thereof from any other person or approach or negotiate with any other person in respect thereof so as to bring the transactions contemplated by this Agreement within the provisions of Section 5 of the Securities Act of 1933.

5. The Permanent Investor and, in the case of subparagraph (b), the Investor, represents and warrants:

(a) It is acquiring its interest in the CSA Indebtedness for its own account for investment and not with a view to or for sale in connection with the distribution of the same, nor with any present intention of distributing or selling the same, provided however, that, subject to any requirement of law, the disposition of its property shall at all times be within its control.

(b) It represents that it has full power and authority to execute and deliver this Agreement and carry out its terms.

(c) It is not acquiring its interest in the CSA Indebtedness directly or indirectly with the assets of or in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which the Lessee, the

Investor, NAC, the Owner or the Trustee in its individual capacity is a party in interest, and with which such a transaction could be a prohibited transaction, all within the meaning of ERISA.

The Permanent Investor agrees that any transfer of all or part of its interest in the CSA Indebtedness shall be upon the express condition that the transferee thereof shall be bound by and subject to the terms and conditions of this Agreement, that such transfer shall not subject this transaction to the registration provisions of the Securities Act of 1933 or the securities laws of any state, that its transferee will make the representations set forth in Section 5(c) hereof and that its transferee will approve the Participation Documents. Prior to any such transfer, such Permanent Investor shall notify the Agent, the Trustee and the Lessee in writing thereof and the Agent shall cause to be prepared and delivered to such Permanent Investor an appropriate agreement, to be entered into among such Permanent Investor, such transferee and the Agent, evidencing such transfer upon the terms hereof.

6. The Trustee represents and warrants:

(a) It is a duly organized and validly existing national banking association in good standing under the laws of the United States.

(b) It has the full corporate power, authority and legal right to carry on its business as now conducted and is duly authorized and empowered to execute and deliver the Trust Agreement and, acting pursuant thereto, this Agreement, the CSA, the Lease, the Lease Assignment and the Acknowledgment of Notice of Assignment (the "Trustee Documents"), and to fulfill and comply with the terms, conditions and provisions thereof.

(c) The Trustee Documents have been duly authorized, executed and delivered by it and, assuming due authorization, execution and delivery thereof by the other party or parties thereto, constitute legal, valid and binding instruments, enforceable in accordance with their terms.

(d) No authorization, consent or approval from any governmental or public regulatory body or authority of the United States or of any of the states thereof or the District of Columbia is necessary for the execution, delivery and performance by it of the Trustee Documents.

(e) It represents that it is not entering into the Trustee Documents or any other transaction contemplated thereby directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan)

with respect to which it in its individual capacity or, to the best of its knowledge, the Lessee, the Owner, NAC, the Investor or the Permanent Investor is a party in interest, all within the meaning of ERISA.

7. The obligation of the Permanent Investor to make payment to the Agent pursuant to Paragraph 2 hereof and the obligation of the Agent to make payment to the Investor forthwith on the Deposit Date pursuant to Paragraph 2 hereof shall be subject to the receipt by the Agent and the Owner on or prior to the Deposit Date of the following documents, in form and substance satisfactory to the Agent, King & Spalding, special counsel to the Permanent Investor, the Owner and Haight, Gardner, Poor & Havens, special counsel to the Owner, and dated not more than 10 days prior to the Deposit Date:

(a) An opinion of Cravath, Swaine & Moore, special counsel for the Permanent Investor, to the effect that:

(i) this Agreement, assuming due authorization, execution and delivery by each of the parties, constitutes a legal, valid, binding and enforceable instrument;

(ii) the CSA and the Lease have each been duly authorized, executed and delivered and each is a legal, valid and binding instrument, enforceable in accordance with its terms;



(iii) the CSA Assignment, the Lease Assignment and the Consent have each been duly authorized, executed and delivered and each is a legal, valid, binding and enforceable instrument;

(iv) the Agent is vested with all right, title and interest of the Trustee purported to be assigned to it by the Lease Assignment; the Agent is vested with all right, title and interest of NAC purported to be assigned to it by the CSA Assignment and the Agent has a valid security interest therein, and the Equipment, at the time of delivery thereof to the Lessee under the CSA, was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA);

(v) this Agreement, the CSA, the CSA Assignment, the Lease and the Lease Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and no other filing or recordation is necessary for the protection of the rights of the Agent therein or in the Equipment in any state of the United States or the District of Columbia;

(vi) no authorization or approval from any governmental or public body or authority of the

United States or of any of the states thereof or of the District of Columbia is, to the knowledge of said special counsel, necessary for the execution, delivery and performance of the Participation Documents;

(vii) under the circumstances contemplated by this Agreement it is not necessary to register the CSA, the CSA Assignment or any certificate of interest delivered pursuant hereto under the Securities Act of 1933 or the securities laws of any state or to qualify the CSA or any other instrument or agreement contemplated hereby or thereby under the Trust Indenture Act of 1939;

(viii) the legal opinions referred to in subparagraphs (b), (c) and (d) of this Paragraph 7 are satisfactory in form and scope to said special counsel and that in its opinion the Permanent Investor and said special counsel are justified in relying thereon;

and as to such other matters incident to the transactions contemplated by this Agreement as the Permanent Investors may reasonably request.

(b) An opinion of counsel for the Owner to the effect set forth in subparagraphs (a), (b) and (c) of

Paragraph 4 and in clause (vi) of subparagraph (a) of this Paragraph 7, insofar as such matters relate to the Owner.

(c) An opinion of counsel for the Lessee to the effect set forth in subparagraphs (a), (b), (c), (d), (e), (g), (h) and (k) of Paragraph 3 hereof (which in the case of subparagraphs (d), (e), (g), (h) [only to the issue of the actual filing of this Agreement] and (k) may be to the best knowledge of such counsel after due inquiry) and to the further effect that no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects any property or interest therein of the Lessee now attaches or hereafter will attach to the Equipment or in any manner adversely affects or will adversely affect the right, title and interest of the Trustee, the Owner or the Agent therein.

(d) An opinion of counsel for the Trustee to the effect set forth in subparagraphs (a), (b), (c) and (d) of Paragraph 6 hereof (which in the case of subparagraph (d) may be to the best knowledge of such counsel after due inquiry).

(e) A certificate of an officer of the Lessee to the effect that (a) the representations and warranties of the Lessee contained in this Agreement are true on and as of the Deposit Date, with the same effect as though made

on such Date, (b) the Lessee is not currently in default under the Lessee Documents and no condition exists nor has any event occurred which with the giving of notice or the lapse of time or both would constitute such a default and (c) there has been no materially adverse change in the Lessee's operation, property, assets or condition, financial or otherwise, since December 31, 1983.

(f) A certificate of an officer or authorized attorney-in-fact of the Owner to the effect that (a) the Owner is not in default under the Owner Documents and no condition exists nor has any event occurred which with the giving of notice or the lapse of time or both would constitute such a default, (b) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the United States Internal Revenue Code of 1954) or, to the best of his knowledge and belief, other tax liens have been filed and are currently in effect against the Owner which could adversely affect the interests of the Agent in such Equipment or the Lease, (c) except for the CSA and the CSA Assignment, no mortgage, deed of trust or other lien of any nature whatsoever now in existence which now covers or affects or which may hereafter cover or affect any property or interest therein of the Owner now attaches or hereafter will attach to the Equipment or in any manner

adversely affects or will adversely affect the right, title and interest of the Agent therein and (d) the Owner's representations and warranties contained in this Agreement are true on and as of the Deposit Date with the same effect as if made on such date.

(g) A certificate or certificates of insurance in accordance with § 7.6 of the Lease.

(h) Executed counterparts of this Agreement.

(i) Notification (oral or written) that the Agent has received from the Lessee in immediately available funds an amount equal to \$20,908.06 as a payment under the Lease.

(j) Such other documents as the Agent, the Permanent Investor or its special counsel, may reasonably request.

In giving the opinions specified in subparagraphs (a), (b), (c) and (d) of this Paragraph 7, counsel may qualify its opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and to the further effect that the availability of the remedy of specific performance is within the discretion of the enforcing court. In giving the opinion specified in subparagraph (a) of this Paragraph 7, counsel may rely (a) on the opinion of counsel for NAC as to the authorization, execution and delivery by NAC of the Owner Documents, (b) on

NAC's warranties of title set forth in Section 14.5 of the CSA, and (c) on the opinion of counsel for the Owner, the Lessee or the Trustee as to any other matter governed by the law of any jurisdiction other than the State of New York or the United States. In giving the opinion specified in subparagraph (b) of this Paragraph 7, counsel may rely on the opinion of counsel for the Trustee as to all matters governed by the law of the State of Illinois.

The Deposit Date closing hereunder shall take place at the offices of King & Spalding, in Atlanta, Georgia.

8. The Agent will accept payments made to it by or for the account of the Trustee pursuant to the CSA and the CSA Assignment, on account of the principal of or accrued interest on the CSA Indebtedness, and will apply such payments promptly, first to the pro rata payment of interest payable on the CSA Indebtedness and second to the pro rata payment of the installments of the CSA Indebtedness in the order of maturity thereof until the same shall have been paid in full.

The Agent will accept all sums paid to it pursuant to Article 7 of the CSA with respect to Casualty Occurrences or a Termination (as defined in § 7 of the Lease) and will apply such sums to the pro rata prepayment of each of the installments of the CSA Indebtedness remaining unpaid (in proportion to the principal amount of CSA Indebtedness

represented by each such installment), without premium, together with interest accrued and unpaid on such prepaid CSA Indebtedness and will distribute such prepayment and interest thereon to the Permanent Investors. The Agent will furnish to the Permanent Investors a revised schedule of payments showing the reduction of their respective interests in the installments of the CSA Indebtedness remaining unpaid and the interest payable thereon.

Notwithstanding anything to the contrary contained herein, if a Declaration of Default (as defined in the CSA) is in effect, all moneys held by or coming into the possession of the Agent under the Participation Documents applicable to the payment or prepayment of CSA Indebtedness or interest thereon (including without limitation the net proceeds of any repossession and sale or lease of any unit of Equipment after deduction of all expenses, including reasonable counsel fees, incurred by the Agent in connection with such repossession and sale or lease or otherwise hereunder which shall not have been previously reimbursed to the Agent by the Trustee pursuant to the CSA) immediately shall be distributed by the Agent to the Permanent Investors pro rata and the Agent shall otherwise take such action as is referred to in this Paragraph 8.

All payments to be made by the Agent hereunder shall (subject to timely receipt by the Agent of available funds) be

made by bank wire transfer of Federal funds for credit to the account of the Permanent Investor at Trust Company Bank, Atlanta, Georgia, Account Number 8800088604, or as may be specified to the Agent in writing.

So long as, to the actual knowledge of the Agent, no default under Article 16 of the CSA shall have occurred and be continuing, the Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights or taking or refraining from taking any action which may be vested in it or which it may be entitled to assert or take, hereunder or under the CSA, the CSA Assignment, the Lease or the Lease Assignment except as otherwise specifically provided herein. The Agent shall not incur any liability hereunder or otherwise in acting upon any notice, certificate or other paper or instrument believed by it in good faith to be genuine and signed by the proper party or parties, or with respect to anything which it may do or refrain from doing in the exercise of its best judgment, or which may seem to it to be necessary or desirable in the premises, except liability resulting from its own misconduct or negligence. In case the Agent shall have actual knowledge of the occurrence of a Default howsoever arising, the Agent shall give prompt telephonic notice thereof, confirmed in writing, to the Trustee, the Owner, the Lessee, the Permanent Investors and NAC. The Agent shall take such



action (including enforcement actions) and assert such rights under the CSA and the Lease as shall be agreed upon by holders of a majority in principal amount of the CSA Indebtedness then outstanding; provided, however, that, notwithstanding the foregoing, the Agent shall not take any such action which would reduce the amount of principal or the rate of interest owing to a Permanent Investor pursuant hereto, or which would extend the time of payment of such principal or interest without the written consent of such Permanent Investor; and provided further, however, that the Agent will take all action required to be taken by it under the Participation Documents. In case the Agent is required to take action hereunder, it shall be indemnified against any liability or expense, including reasonable counsel fees, in connection with taking such action or asserting such rights by the Permanent Investors in proportion to their respective interests in the aggregate CSA Indebtedness then outstanding.

The Agent may consult with legal counsel of its own choice and shall not be under any liability for any action taken or not taken in good faith by it in accordance with the opinion of such counsel.

The Agent will promptly mail or deliver to each Permanent Investor one copy of all notices, statements, documents or schedules received by it from the Trustee or the Lessee pursuant to the Participation Documents.

All notices, instructions, directions and approvals to be delivered hereunder to the Agent by any Permanent Investor shall be in writing and signed by an officer, manager or assistant manager of such Permanent Investor. The Agent may rely on any notice, instruction, direction or approval so signed.

The Agent represents and warrants that it has all necessary corporate authority to enter into this Agreement and to execute and deliver the certificate or certificates of interest. The Agent does not make any representation or assume any responsibility with respect to the validity of the Participation Documents or any certificate of interest (except with respect to its own execution thereof) or any of the matters covered thereby or the value of or the title to the Equipment.

In the event of any dispute with respect to the delivery or ownership or right to possession of funds or documents at any time held by the Agent hereunder or with respect to title to any unit of Equipment, the Agent is hereby authorized and directed to retain, without liability to anyone, all or any of such funds or documents of title until such dispute shall have been settled either by agreement of the Permanent Investors or by final order, decree or judgment of a court of competent jurisdiction. The Agent, if requested so to

do by Permanent Investors holding more than 50% of the then outstanding CSA Indebtedness, shall invest and reinvest such funds as directed by such holders.

The Agent shall be entitled to terminate its duties and responsibilities hereunder by giving written notice to each Permanent Investor that it desires to terminate such duties and responsibilities on a date (at least 30 days subsequent to the giving of such notice) stated in said notice. If, prior to the date stated in said notice, Permanent Investors holding interests totaling more than 50% of the CSA Indebtedness then outstanding shall have requested in writing that the Agent assign to a person or institution designated by such holders all right, title and interest of the Agent under the CSA and the CSA Assignment and in and to the Equipment and the Lease and the Lease Assignment, the Agent shall comply with such request. In the event that such request is not received by the Agent on or before the date designated in said notice, the Agent shall be entitled to appoint a successor to act hereunder (which successor shall be a bank or trust company located in the Borough of Manhattan, City and State of New York, or in Chicago, Illinois, or in Atlanta, Georgia, having capital and surplus aggregating at least \$100,000,000) and to assign to such successor, subject to the provisions of this Agreement, all such right, title and interest of the Agent. Upon such

assignment by the Agent to a person or institution designated by such Permanent Investors or, in the absence of such designation, to a successor appointed by the Agent, the Agent shall thereupon be relieved of all duties and responsibilities hereunder.

9. The Lessee will deliver or cause to be delivered to the Agent, the Owner, the Trustee and each Permanent Investor (a) as soon as available and in any event within 90 days after the end of each of its fiscal years, a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of the Lessee stating that he has reviewed the activities of the Lessee during such year and that to the best of his knowledge the Lessee during such year has kept, observed, performed and fulfilled each and every covenant, obligation and condition contained in the Lessee Documents or, if an Event of Default (as defined in the Lease) shall exist or have existed or if an event has occurred and is continuing which with the giving of notice or the lapse of time or both would constitute an Event of Default, specifying such Event of Default and all such events and the nature and status thereof and (b) (i) as soon as available, and in any event within 60 days after the end of the first, second and third quarterly accounting periods in each fiscal year of the Lessee, copies of the Unaudited Consolidated Balance Sheet of the

Lessee as of the end of such accounting period and copies of the related Unaudited Consolidated Statements of Income of the Lessee for the portion of its fiscal year then ended, all in reasonable detail, accompanied by a cover letter from the Treasurer, (ii) as soon as available, and in any event within 90 days after the end of each of its fiscal years, copies of the Consolidated Balance Sheet of the Lessee as of the end of such fiscal year and copies of the related Consolidated Statements of Income and Changes in Financial Position for such fiscal year, all in reasonable detail, audited by independent certified public accountants of recognized national standing and stating in comparative form the consolidated figures as of the end of the previous fiscal year, (iii) as soon as available, a copy of each Current Report on Form 8-K (or its successor), Quarterly Report on Form 10-Q (or its successor) and Annual Report on Form 10-K (or its successor), if any, filed with the Securities and Exchange Commission by the Lessee, (iv) as soon as available, a copy of each prospectus, if any, filed by the Lessee with the Securities and Exchange Commission pursuant to Rule 424(b) (or its successor) of the Commission under the Securities Act of 1933, as amended, and (v) from time to time such other information as any Permanent Investor or the Owner may reasonably request.

The Lessee will permit representatives of the Trustee, the Agent, any Permanent Investor and the Owner, at such party's risk and expense, with respect to matters reasonably related to the transactions contemplated by this Agreement or to the financial condition of the Lessee, and when accompanied by a representative of the Lessee, to visit and inspect any of the properties of the Lessee, to examine its corporate books and financial records (except to the extent such examination would result in the loss by the Lessee of a legally recognized privilege against compulsory disclosure) and to discuss its affairs, finances and accounts with its officers and independent public accountants all at such reasonable times and as often as may be reasonably requested.

10. The Lessee shall pay, or to cause to be paid in connection with this Amended and Restated Participation Agreement and Amendment, (i) the reasonable fees and disbursements of King & Spalding as special counsel for the Permanent Investors and the cost of producing and reproducing the Participation Agreement, this amendment and restatement thereof, the Lease, the Trust Agreement, the CSA, the CSA Assignment, the Lease Assignment, the Consent and the Indemnity Agreement, (ii) the reasonable fees and disbursements of Cravath, Swaine & Moore in connection with the opinion delivered, pursuant to Paragraph 7(a) hereof, (iii) the

reasonable fees and disbursements of Haight, Gardner, Poor & Havens, special counsel to the Owner, and Sullivan & Cromwell, special tax counsel to the Owners, (iv) the reasonable routine and ordinary fees, costs and disbursements of the Agent and the Trustee (including the cost of delivery for the certificates of interest and counsel fees pursuant to this Agreement), (v) the costs of filing, recording and giving public notice or publication as to such filing and recording of this Agreement, the Lease, the CSA, the CSA Assignment and the Lease Assignment and any amendments or supplements thereto with the Interstate Commerce Commission and (vi) any other reasonable expenses incurred by the parties hereto in connection herewith. The Permanent Investor, the Investor, the Trustee, the Owner and the Agent shall have no liability for any of the aforesaid fees, costs, disbursements and expenses or for any other expenses. The Lessee agrees to pay all expenses, costs and fees in connection with the preparation, execution, delivery, recording and filing of, and the giving of public notice or publication with respect to any amendments, supplements or waivers with respect to the Participation Documents and the transactions contemplated thereby entered into after the Deposit Date or in connection with any permanent financing (provided, however, that if the Owner has requested any such amendment, supplement or waiver, the Owner shall reimburse the Lessee for such expenses, costs and fees).

11. All documents and notices deliverable to the Lessee hereunder shall be delivered to it at P.O. Drawer D, Williamsburg, Virginia 23187, attention of Treasurer.

All documents, notices and funds deliverable hereunder to the Agent shall be delivered to it at its address at 135 South LaSalle Street, Chicago, Illinois 60690, attention of Corporate Trust Division.

All documents and notices deliverable to the Owner shall be delivered to it at 260 Long Ridge Road, Stamford, Connecticut 06904, Attention of Manager-Operations, Transportation Financing Department, with a separate copy to the attention of each of Manager-Rail Component and Contracts Administration-Rail Component.

All documents, notices and funds deliverable hereunder to the Trustee shall be delivered to it at its address at 120 South LaSalle Street, Chicago, Illinois 60603, attention of Corporate Trust Department.

All documents, notices and funds deliverable to the Investor shall be delivered to it at 23 Wall Street, New York, New York, Attention: Mr. Frank Teague.

All documents, notices and funds deliverable to the Permanent Investor shall be delivered to it at its address at Suite 1800, First Atlanta Tower, 2 Peachtree Street, N.W., Atlanta, Georgia 30383-3501.



12. In the event that the Lessee or the Trustee shall have knowledge of an Event of Default under the Lease or an event of default under the CSA, such party shall give prompt telephonic notice (confirmed in writing) thereof to the other and to the Agent, the Permanent Investor and the Owner. Knowledge shall mean actual knowledge of an officer or responsible department head of the Lessee or actual knowledge of an officer or an employee in the Corporate Trust Department of the Trustee.

13. Each and all of the representations, warranties, covenants and agreements herein made (except for the representations made by the Trustee under Paragraph 6 hereof for which it shall be liable in its individual capacity) on the part of the financial institution acting as Trustee hereunder are made and intended not as personal representations, warranties, covenants and agreements by said institution or for the purpose or with the intention of binding said institution personally but are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) and (except as aforesaid) this Agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be

asserted or enforceable against said institution or the Owner on account of any representation, warranty, covenant or agreement herein of the Trustee (except as aforesaid or in the case of gross negligence or willful misconduct of the Trustee), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee, the Agent, the Investor and the Permanent Investors or any person claiming by, through or under any of them; provided, however, that the Lessee, the Agent, the Investor and the Permanent Investors or any person claiming by, through or under any of them making claim hereunder may look to said Trust Estate for satisfaction of the same. Notwithstanding the foregoing, the Owner agrees with the other parties hereto to discharge all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Owner described in Section 13.3 of the CSA (unless the validity thereof shall be contested as provided in said Section 13.3).

14. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The terms of this Agreement and the rights and obligations of the parties hereto hereunder may be changed only by an agreement in writing, signed by the party against whom enforcement of such charge is sought.

15. The Owner agrees, for the benefit of the Permanent Investors, to take all necessary action, including, without limitation, payment of funds, to enable the Trustee to discharge pursuant to the proviso in Section 13.3 of the CSA the claims, liens, charges or security interests referred to in said paragraph claimed by any party from, through or under the Owner (unless the validity thereof shall be contested as provided in said Section 13.3).

16. The Trustee and the Agent, as assignee of NAC, agree that, subject to payment by the Permanent Investor of the amount to be paid by it pursuant to Paragraph 2 hereof, the CSA shall be amended as follows:

(a) Section 4.4 thereof is deleted and the following is substituted therefor:

4.4 CSA Indebtedness; Payment Dates; Interest.

"(a) The installments of the CSA Indebtedness shall be payable quarterly on January 1, April 1, July 1 and October 1 in each year, commencing October 1, 1984, until the last such installment has been paid (each such date being herein called a "Payment Date"). If any Payment Date is not a Banking Day, the payment shall be payable on the next succeeding Banking Day. The unpaid balance of the CSA

Indebtedness shall bear interest from and including the Deposit Date as defined in the Participation Agreement at a rate of interest per annum for each Interest Period equal to the Floating Rate. For purposes hereof, (i) "Interest Period" shall mean (I) from the date hereof through June 30, 1989, a period of time that commences on the Deposit Date or on the last day of the immediately preceding Interest Period and ends (A) on the date one, two or three months thereafter as the Borrower may elect, in the case of a LIBOR Option, an Adjusted C/D Rate Option or a Federal Funds Rate Option or (B) on the date the Lessee gives notice to Barclays Bank International Limited (the "Permanent Investor") in the case of a Prime Rate Option, provided that any Interest Period that would otherwise end on a day that is not a Banking Day shall be extended to the next succeeding Banking Day and (II) thereafter a period of time that commences on the last day of the immediately preceding Interest Period and ends 6 months thereafter; (ii) "Floating Rate" shall mean (A) from the date hereof through June 30, 1985, (w) the Prime Rate or (x) the LIBOR Rate plus one-fourth of one percent (1/4%) or (y) the Adjusted C/D Rate plus

one-fourth of one percent ( $1/4\%$ ) or (z) the Federal Funds Rate plus the Federal Funds Increment plus three-eighths of one percent ( $3/8\%$ ); (B) from July 1, 1985 through June 30, 1987, (w) the Prime Rate or (x) the LIBOR Rate plus three-eighths of one percent ( $3/8\%$ ) or (y) the Adjusted C/D Rate plus three-eighths of one percent ( $3/8\%$ ) or (z) the Federal Funds Rate plus the Federal Funds Increment plus one-half of one percent ( $1/2\%$ ); (C) from July 1, 1987 through June 30, 1989, (w) the Prime Rate plus one-eighth of one percent ( $1/8\%$ ) or (x) the LIBOR Rate plus one-half of one percent ( $1/2\%$ ) or (y) the Adjusted C/D Rate plus one-half of one percent ( $1/2\%$ ) or (z) the Federal Funds Rate plus the Federal Funds Increment plus five-eighths of one percent ( $5/8\%$ ); in each case (A, B and C) as the Lessee shall select by giving notice to the Permanent Investor, in the case of a LIBOR Option, at least two Banking Days prior to the beginning of each Interest Period, and otherwise prior to the beginning of each Interest Period, at which time the Lessee shall select the Floating Rate for a one, two or three months period, or if the Lessee shall fail to so select, the same rate option and time period in effect for the preceding Interest

Period; (D) thereafter the LIBOR Rate plus five percent (5%); (iii) "Prime Rate" shall mean the rate of interest announced by the Permanent Investor from time to time as its Prime Rate, with any change in the rate of interest resulting from a change in the Prime Rate being effective as of the opening of business on the effective date of a change in the Prime Rate announced by the Permanent Investor; (iv) "LIBOR Rate" applicable to any Interest Period shall mean the rate per annum quoted by the Permanent Investor as its one-month, two-month, three-month or six-month LIBOR Rate, as the case may be, for the amount of CSA Indebtedness for the succeeding Interest Period; (v) "Adjusted C/D Rate" applicable to any Interest Period shall mean the rate per annum quoted by the Permanent Investor as its one-month, two-month or three-month Adjusted C/D Rate, as the case may be, for the amount of CSA Indebtedness for the succeeding Interest Period; (vi) "Federal Funds Rate" applicable to any Interest Period shall mean the rate per annum quoted by the Permanent Investor as its Federal Funds Rate, provided that the Federal Funds Rate shall not be higher than 10 basis points over the average federal funds overnight rate as quoted by

the Federal Reserve Bank of New York, for the business day to which the Federal Funds Rate applies; (vii) "Federal Funds Increment" shall mean the per annum interest rate derived from the following table:

<u>Federal Funds Rate</u>	<u>Increment</u>		
	<u>One Month</u>	<u>Two Month</u>	<u>Three Month</u>
0-5%	.01%	.02%	.03%
5.00001-6	.02	.03	.05
6.00001-7	.02	.04	.06
7.00001-8	.03	.05	.08
8.00001-9	.03	.07	.10
9.00001-10	.04	.08	.13
10.00001-11	.05	.10	.16
11.00001-12	.06	.12	.19
12.00001-13	.07	.14	.22
13.00001-14	.08	.17	.25
14.00001-15	.10	.19	.29
15.00001-16	.11	.22	.33
16.00001-17	.12	.24	.37
17.00001-18	.14	.27	.42
18.00001-19	.15	.31	.47
19.00001-20	.17	.34	.52
20.00001-21	.19	.37	.57
21.00001-22	.21	.41	.63
22.00001 and above	To be negotiated		

(viii) "LIBOR Option" shall mean any selection hereunder by the Lessee of a Floating Rate based on LIBOR; (ix) "Adjusted C/D Rate Option" shall mean any selection hereunder by the Lessee of a Floating Rate based on the Adjusted C/D Rate; (x) "Federal Funds Rate Option" shall mean any selection hereunder by the Lessee of a Floating Rate based on the Federal

Funds Rate; (xi) "Prime Rate Option" shall mean any selection hereunder by the Lessee of a Floating Rate based on the Prime Rate; (xii) "Banking Day" shall mean any day on which commercial banks are open for domestic and international business (including dealings in dollar deposits) in London and New York City and Chicago, Illinois. Where the Prime Rate Option or Federal Funds Rate Option is selected, to permit calculation of the Floating Rate prior to the end of any Interest Period, it is agreed that the calculation will be made on the assumption that the Prime Rate or the Federal Funds Rate does not change for the last 10 days of the Interest Period. The effect of actual changes in the Prime Rate or the Federal Funds Rate occurring in the last 10 days of the Interest Period will be reflected as an addition to or subtraction from, as the case may be, the interest payable on the succeeding Payment Date. The amount of principal of the CSA Indebtedness payable on each Payment Date shall be calculated to be substantially in proportion to the amount and allocation of principal on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal shall



completely amortize the CSA Indebtedness at maturity on January 1, 2007.

Interest on the unpaid balance of the CSA Indebtedness shall be payable in arrears to the extent accrued at the end of each Interest Period, provided, however that when the end of any Interest Period is not a Payment Date, such payment shall be made on the next succeeding Payment Date and such interest due shall bear interest at the Floating Rate for the subsequent Interest Period(s) until the next succeeding Payment Date.

(b) If, after the date of this Agreement, the adoption of any applicable law, rule or regulation, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof or compliance by any Permanent Investor with any request or directive (whether or not having the force of law) of any such authority shall make it unlawful or impossible for such Permanent Investor to make, maintain or fund its Investment on the basis of the LIBOR Rate or the Adjusted C/D Rate, then such Investor forthwith shall

so notify the Trustee and the Lessee. Upon receipt of such notice and until such Permanent Investor notifies the Trustee and the Lessee that such notice is no longer effective, the Floating Rate shall be the applicable Prime Rate Option or Federal Funds Rate Option, as the Lessee shall select by giving the notice described in subsection (a) of this Section 4.4, commencing on either (a) the last day of the then current Interest Period if such Permanent Investor may lawfully continue to fund and maintain its Investment on such basis to such day or (b) immediately if such Permanent Investor may not lawfully continue to fund and maintain its Investment on such basis to such day.

(c) If (A) the adoption by the Board of Governors of the Federal Reserve System on August 15, 1980, of revisions to Regulation D or (B) after the date hereof, the adoption of, or any change in, any applicable law, rule or regulation or the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof or compliance by any Permanent Investor with any request or directive of any such

authority, central bank or comparable agency (whether or not having the force of law):

(i) shall subject such Permanent Investor to any tax, duty or other charge with respect to its Investment if the Floating Rate is to be determined on the basis of the LIBOR Rate or the Adjusted C/D Rate or shall change the basis of taxation of payments to such Permanent Investor of the principal of or interest on its Investment or in respect of its Investment (except for changes in the rate of tax on the overall net income of such Investor imposed by the jurisdiction in which its principal executive office is located); or

(ii) shall impose, modify or deem applicable any reserve (including, without limitation, any imposed by the Board of Governors of the Federal Reserve System), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, such Permanent Investor in the London interbank market or the market for certificates of deposit in the United States or shall impose on such Permanent Investor or the London interbank

market or the market for certificates of deposit in the United States any other condition affecting its obligation to make or maintain its Investment in the London interbank market or the market for certificates of deposit in the United States;

and the result of any of the foregoing is to increase the cost to such Permanent Investor of making or maintaining its Investment or to reduce the amount of any sum received or receivable by it in respect thereof by an amount deemed by such Permanent Investor to be material, then within fifteen (15) days after demand by such Permanent Investor to the Trustee and the Lessee, the Trustee will pay to such Permanent Investor such additional amount or amounts as will compensate such Permanent Investor for such increased cost or reduction. Such Permanent Investor will promptly notify the Trustee and the Lessee of any event of which it has knowledge, occurring after the date hereof, which will entitle it to compensation pursuant to this paragraph (c). A certificate of any Permanent Investor setting forth the basis for determining such additional amount or amounts necessary to compensate such Permanent

Investor shall be conclusive in the absence of manifest error. Upon receipt by the Lessee of a demand from any Permanent Investor under this paragraph (c), the Lessee may elect, upon three Banking Days' notice to such Permanent Investor, to have the Floating Rate be equal to the applicable Prime Rate Option or Federal Funds Rate Option; provided, that the Trustee shall reimburse such Permanent Investor on demand for any loss incurred by it as a result of such election, including, without limitation, any loss incurred in liquidating or employing deposits from third parties for the period after such election takes effect to the end of the applicable Interest Period."

(b) Section 4.5 thereof is deleted and the following is substituted therefor:

"4.5. Calculation of Interest. Interest under this Agreement shall be calculated on the basis of a 360-day year for the actual number of days elapsed in the Interest Period."

(c) Section 4.6 is deleted and the following is substituted therefor:

"4.6. Penalty Interest. The Trustee will pay interest at the rate of 2% per annum above the Prime

Rate ("Penalty Rate"), upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding."

17. The parties to the Lease agree that, subject to the payment by the Permanent Investor of the amounts to be paid by it pursuant to Paragraph 2 hereof, the Lease shall be amended as follows:

(a) In § 3.1, the reference to Section 4.4(d) of the CSA is changed to Section 4.4(c) of the CSA.

(b) The second sentence of § 3.2 is deleted and the following is substituted therefor: "The term "business day" as used herein means any day on which commercial banks are open for domestic and international business (including dealings in dollar deposits) in London and New York City and Chicago, Illinois."

(c) In § 19, the words "1% per annum above the Floating Rate" are deleted and the following is substituted therefor: "2% per annum above the Prime Rate"; and the words "of twelve 30-day months" are deleted and the following is substituted therefor: "for the actual number of days elapsed."

The parties to the Lease further acknowledge that all references in the Lease to the Floating Rate (as defined in Section 4.4 of the CSA) are to the Floating Rate as defined in Section 4.4 of the CSA, as amended hereby.

18. Except as amended hereby, the CSA and the Lease shall remain in full force and effect.

19. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by all the parties so long as each party hereto shall have executed one counterpart hereof, which shall be effective upon delivery thereof to King & Spalding at its offices in Atlanta, Georgia.

20. The parties hereto agree that, subject to the consent of the Owner, which consent will not be unreasonably withheld, the Lessee may provide other investors which may, on any Payment Date after June 30, 1987, acquire all the Permanent Investor's interest in the CSA Indebtedness. In connection with any such acquisition, this Agreement, the Lease and the CSA will be amended to set forth the terms to be agreed upon by such other investors and the parties hereto. Such amendments may include, among other things, changes in the interest rate and the schedule of payments applicable to the CSA Indebtedness as well as corresponding changes in the rentals and Casualty and Termination Values.

The Permanent Investor agrees, notwithstanding anything to the contrary in the CSA or the certificate of interest, to accept prepayment of its interest in the CSA Indebtedness on any Payment Date after June 30, 1987, with interest paid to the date of prepayment, without premium, if and when requested to do so in a written notice given by the Lessee to all parties hereto, not less than 60 days prior to such date of prepayment, in order to accomodate such subsequent financing. In that connection, the Permanent Investor agrees to provide whatever releases and assurances may be reasonably requested by the Lessee to accomodate such permanent financing. The Lessee agrees to pay all costs, fees and expenses in connection with any such acquisition of the Permanent Investor's interest in the CSA Indebtedness.

21. Lessee hereby agrees to indemnify the Owner on an after-tax basis for any adverse tax consequences, including without limitation, the loss of any tax benefits contemplated by Section 1 of the Indemnity Agreement, which the Owner may suffer as a result of the execution, delivery or consummation of this Agreement and the amendments contained herein, or of any future amendments made pursuant to Section 20 hereto.



IN WITNESS WHEREOF, the parties hereto have caused  
this Agreement to be executed by duly authorized signatories as  
of the date first above written.

BADISCHE CORPORATION,

By:   
Treasurer



Sworn to and subscribed  
before me this 6 day  
of July, 1984.

  
Notary Public

LA SALLE NATIONAL BANK,

By: \_\_\_\_\_  
Vice President

Sworn to and subscribed  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 1984.

\_\_\_\_\_  
Notary Public

GENERAL ELECTRIC CREDIT  
CORPORATION,

By: \_\_\_\_\_  
Attorney-in-fact

Sworn to and subscribed  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 1984.

\_\_\_\_\_  
Notary Public

EXCHANGE NATIONAL BANK OF  
CHICAGO, not in its individual  
capacity but solely as Trustee  
under the aforesaid Trust  
Agreement,

Sworn to and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 1984.

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_  
First Vice President

MORGAN GUARANTY TRUST COMPANY  
OF NEW YORK,

Sworn to and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 1984.

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_  
Asst. Vice President

BARCLAYS BANK INTERNATIONAL  
LIMITED, Atlanta Agency

Sworn to and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 1984.

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_  
First Vice President  
and Manager

Sworn to and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 1984.

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_  
Vice President

## APPENDIX I

Conditional Sale Agreement dated as of June 1, 1981,  
as amended (Secured by Lease Obligations of  
BADISCHE CORPORATION)  
Floating Interest Rate

### CERTIFICATE OF INTEREST

LA SALLE NATIONAL BANK, as agent ("Agent"), hereby acknowledges receipt from BARCLAYS BANK INTERNATIONAL LIMITED ("Investor") of \$8,271,319.65, such sum having been paid by the Investor under and pursuant to the terms and conditions of an Amended and Restated Participation Agreement and Agreement dated as of July 1, 1984, ("Participation Agreement"), among BADISCHE CORPORATION ("Lessee"), the Agent, GENERAL ELECTRIC CREDIT CORPORATION ("Owner"), EXCHANGE NATIONAL BANK OF CHICAGO, as trustee ("Trustee"), MORGAN GUARANTY TRUST COMPANY OF NEW YORK and the Investor. By reason of such payment the Investor has an interest in a principal amount equal to such sum in and to (i) the Conditional Sale Agreement dated as of June 1, 1981, as amended ("CSA"), between NORTH AMERICAN CAR CORPORATION ("NAC") and the Trustee, the railroad equipment covered by the CSA and the CSA Indebtedness (as defined in the CSA), (ii) the Agreement and Assignment dated as of June 1, 1981, between NAC and the Agent, (iii) the right, security title and interest of the Agent in and to the Lease of Railroad Equipment dated as of June 1, 1981, as amended ("Lease") between the Lessee and the Trustee, (iv) the Assignment of

Lease and Agreement dated as of June 1, 1981, between the Trustee and the Agent, to which the Lessee acknowledged and consented pursuant to the Consent and Agreement attached thereto and (v) all cash and other property from time to time held by the Agent under the Participation Agreement, except to the extent that installments of such principal amount shall have been paid.

Under the terms of the CSA, subject to the rights of prepayment contained therein in the event of a Casualty Occurrence and/or a Termination (as defined in the Lease), and the Participation Agreement (i) such principal amount is payable in 90 consecutive quarterly installments on each January 1, April 1, July 1 and October 1, commencing on October 1, 1984, until the last such installment has been paid, (ii) such principal amount bears interest from the date hereof on the unpaid portion thereof from time to time outstanding, payable on each January 1, April 1, July 1 and October 1, commencing October 1, 1984, until such principal amount shall have been paid in full, at the Floating Rate (as defined in Section 4.4 of the CSA) and (iii) all such principal and interest remaining unpaid after the same shall have become due and payable bears interest at the rate of 2% per annum above the Prime Rate (as defined in Section 4.4 of the CSA). All such interest shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The Agent has furnished or promptly will furnish to the Investor a schedule

of payments reflecting the dates and amounts of principal payments to be made in respect of the interests of the Investor. All payments received by the Agent in accordance with the terms of the Participation Agreement and the CSA shall be disbursed by the Agent in accordance with the terms and conditions of the Participation Agreement.

The interests of the Investor referred to in this Certificate of Interest may not be transferred except in the manner provided in the Participation Agreement and subject to the terms, conditions and limitations provided therein.

Dated: , 19 .

LA SALLE NATIONAL BANK, as  
Agent under the Participation  
Agreement,

By: \_\_\_\_\_  
Authorized Officer

INQUIRY SHOULD BE MADE TO THE AGENT  
IF CERTIFICATION AS TO BALANCE DUE HEREUNDER IS REQUIRED.

AMENDED AND RESTATED PARTICIPATION AGREEMENT AND AMENDMENT

AMONG

BADISCHE CORPORATION,

Lessee,

LA SALLE NATIONAL BANK,

Agent

GENERAL ELECTRIC CREDIT CORPORATION,

Owner,

EXCHANGE NATIONAL BANK OF CHICAGO,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement  
dated as of the date hereof with  
the Owner,

MORGAN GUARANTY TRUST COMPANY OF NEW YORK,

Investor,

and

BARCLAYS BANK INTERNATIONAL LIMITED, Atlanta Agency,

Permanent Investor

Dated as of July 1, 1984

Floating Rate Conditional Sales Indebtedness  
Due January 1, 2007

[Covering 184 NAC Aluminum Covered Hopper Cars]

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AMENDED AND RESTATED PARTICIPATION AGREEMENT AND AMENDMENT ("Agreement") dated as of July 1, 1984, among BADISCHE CORPORATION, a Delaware corporation ("Lessee"), LA SALLE NATIONAL BANK, a national banking association ("Agent"), GENERAL ELECTRIC CREDIT CORPORATION, a New York corporation ("Owner"), EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, acting not in its individual capacity but solely as trustee ("Trustee") under a Trust Agreement dated as of June 1, 1981 with the Owner ("Trust Agreement"), MORGAN GUARANTY TRUST COMPANY OF NEW YORK ("Investor"), and BARCLAYS BANK INTERNATIONAL LIMITED, Atlanta Agency (the "Permanent Investor") and, together with its successors and assigns, ("Permanent Investors").

WHEREAS the parties hereto (other than the Permanent Investor) have entered into a Participation Agreement dated as of June 1, 1981 (the "Participation Agreement") providing for the purchase of 184 aluminum covered hopper cars (the "Equipment"), as described in Annex B to the CSA (as hereinafter defined), and their lease to the Lessee;

WHEREAS pursuant to the Trust Agreement and the authorization and direction of the Owner, the Trustee has purchased the Equipment from North American Car Corporation ("NAC") pursuant to a Conditional Sale Agreement ("CSA") dated as of June 1, 1981; and NAC has retained a security interest in the units of Equipment constructed, sold and delivered by it pursuant to the CSA until the Trustee fulfills its obligations under the CSA;

WHEREAS the Lessee has leased from the Trustee all the units of the Equipment delivered and accepted under the CSA, pursuant to a Lease of Railroad Equipment ("Lease") dated as of June 1, 1981;

WHEREAS the Investor has furnished 63.23% of the cost of the Equipment by investing in the CSA Indebtedness (as defined in Section 4.3(b) of the CSA), and the owner has furnished 36.77% of the costs of such Equipment by making funds available to the Trustee under the Trust Agreement;

WHEREAS the Lessee has agreed to and has indemnified the Owner pursuant to an Indemnity Agreement ("Indemnity Agreement") dated as of June 1, 1981, between the Lessee and the Owner, against certain losses, liabilities and expenses incurred by or assessed against the Owner;

WHEREAS the security interest of NAC in the Equipment has been assigned to the Agent, acting on behalf of the Investor, pursuant to an Agreement and Assignment dated as of June 1, 1981 ("CSA Assignment"), and the Lease has been assigned to the Agent pursuant to an Assignment of Lease and Agreement ("Lease Assignment") dated as of June 1, 1981, until the Trustee fulfills all its obligations under the CSA; and the Lessee has acknowledged and consented thereto pursuant to the Consent and Agreement dated as of June 1, 1981 ("Consent");

WHEREAS the CSA, the CSA Assignment, the Lease and the Lease Assignment were filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on August 14, 1981, at 10:25 a.m., recordation numbers 13221, 13221-A, 13221-B, and 13221-C, respectively;



WHEREAS the Permanent Investor proposes to acquire the Investor's interests in the Outstanding CSA Indebtedness (as hereinafter defined), and in connection therewith, the interest rate on the CSA Indebtedness will be changed to the Floating Rate as defined in Section 4.4 of the CSA, as amended by Paragraph 16 hereof;

WHEREAS the parties hereto desire to amend and restate the Participation Agreement and amend the CSA and the Lease as herein set forth;

NOW, THEREFORE, in consideration of the agreements and the covenants hereinafter contained, the parties hereby agree as follows:

1. The Trustee and the Owner have entered into the Trust Agreement, and the Trustee has entered into the CSA and pursuant thereto has purchased the units of Equipment described in Annex B to the CSA having an aggregate Purchase Price of \$14,298,399.22.

The Lessee has assigned, transferred, and set over unto the Trustee and its successors and assigns all the right, title and interest of the Lessee in and to the Equipment and to any contracted arrangements with NAC insofar as such arrangements relate to the Equipment.

The parties hereto agree that, subject to the payment by the Permanent Investor of the amounts to be paid by it

pursuant to Paragraph 2 hereof, from and after the Deposit Date (as hereinafter defined) (a) the Investor hereby transfers and assigns to the Permanent Investor all its right, title and interest in and to the CSA Indebtedness, (b) the Participation Agreement shall be amended and restated and the CSA and the Lease shall each be amended as set forth herein and (c) unless the context otherwise requires, the terms "CSA" and "Lease", as used in this Agreement, the CSA and the Lease, the Trust Agreement, the CSA Assignment, the Lease Assignment, the Consent and the Indemnity Agreement (collectively, "Participation Documents"), shall mean, respectively, the CSA and the Lease, each as amended hereby, and the term "Participation Agreement" as used in any of the Participation Documents, other than this Agreement, shall mean this Agreement. By its execution and delivery of this Agreement, the Owner authorizes the Trustee to execute and deliver this Agreement and to carry out its terms.

2. Subject to the terms and conditions hereof, the Permanent Investor will pay to the Agent, in immediately available funds, not later than 11:00 a.m., Chicago time, on July 9, 1984 ("Deposit Date"), an amount equal to \$8,271,319.65. All deposits to be made hereunder by the Permanent Investor with the Agent shall be paid to the Agent at the following address and shall be accompanied by the following

information: La Salle National Bank, Corporate Trust Division, 135 La Salle Street, Chicago, Illinois 60690 for credit to the account of Badische Corporation Lease Financing Trust Account No. 61-5620-50-7.

Upon payment to the Agent of the amount required to be paid by the Permanent Investor pursuant to this Paragraph 2 on the Deposit Date, the Agent will execute and deliver to such Permanent Investor (or, upon the written request of such Permanent Investor, to the nominee or nominees of such Permanent Investor), a certificate or certificates of interest with respect to such payment, substantially in the form annexed hereto as Appendix I, containing the appropriate information and dated the Deposit Date.

Subject to the terms and conditions hereof, upon payment to the Agent on the Deposit Date of the amount to be paid by the Permanent Investor pursuant hereto, the Agent will pay to the Investor an amount (the "Take Out Amount") equal to the sum of the aggregate unpaid CSA Indebtedness represented by the certificates of interest theretofore delivered to the Investor under the Participation Agreement (the "Outstanding CSA Indebtedness"); and the Investor simultaneously with the payment to it of such amount, will surrender such certificates to the Agent for cancellation; it being understood that the Trustee will pay to the Investor on the Deposit Date accrued and

unpaid interest to the Deposit Date on the aggregate amount of Outstanding CSA Indebtedness transferred by the Investor at the rates provided in its certificates of interest (the "Debt Rate" as defined therein being deemed to be the Debt Rate as defined in the CSA prior to its amendment pursuant to this Agreement) and the Investor agrees to look solely to the Trustee for such payment on the Deposit Date.

The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Atlanta, Georgia, Chicago, Illinois, or New York, New York, are authorized or obligated to <sup>remain</sup> closed. All interest under this Agreement (including payments made pursuant to Paragraph 2 hereof) shall be calculated on the basis of a 360-day year for the actual number of days elapsed. At least eight days prior to each date on which interest is due on the CSA Indebtedness pursuant to Section 4.4 of the CSA, the Permanent Investor will give notice to the Owner, the Lessee and the Agent of the amount of interest due on such interest payment date and the calculation thereof, and at least five days prior to each rental payment date under the Lease, the Owner will advise the Lessee and the Agent of the amount of rent due pursuant to Section 3.1 of the Lease on such rental payment date and the calculation thereof.

As soon as practicable after delivery to the Permanent Investor of the certificate or certificates of interest, the Agent will also deliver to such Permanent Investor a schedule of payments reflecting the dates and amounts of principal payments to be made in respect of such certificate or certificates. The Permanent Investor, simultaneously with the final payment to it of all amounts payable in respect of such certificate or certificates, will surrender such certificate or certificates to the Agent.

Pursuant to the CSA Assignment the Agent has acquired from NAC all its right, security title and interest under the CSA, except as specifically excepted by the CSA Assignment. Pursuant to the Lease Assignment, the Agent has acquired for security purposes the rights of the Trustee in, to and under the Lease, except as specifically excepted by the Lease Assignment.

The Participation Documents are hereby approved by the Permanent Investor. Except as herein provided, the Agent will not enter into or consent to any modification or supplement to, or waiver with respect to, any of the Participation Documents that could adversely affect the interest of the Permanent Investors without the prior written approval of Permanent Investors holding a majority of the aggregate CSA Indebtedness then outstanding, it being agreed

that changes in the provisions of the Lease which are not intended or necessary to satisfy the obligations of the Trustee under the CSA shall not be deemed to affect adversely the interests of the Permanent Investors. In determining whether the holders of a requisite percentage of the CSA Indebtedness have joined in any request, consent, waiver, approval or amendment under this Agreement, the Agent shall disregard any CSA Indebtedness known by it to be held by the Lessee, the Owner, or their affiliates.

The Agent will hold the moneys deposited with it pursuant hereto and any interest thereon, the rights under the CSA acquired under the CSA Assignment and the security title to the Equipment following its delivery and acceptance thereunder, and the security interest in the Lease and any payments received by it pursuant to the Lease Assignment, in trust for the benefit of the Permanent Investors. The obligations of the Agent hereunder as such titleholder and with respect to the payments to the Permanent Investors to be made by the Agent are only those expressly set forth herein.

All transactions pursuant hereto which shall occur on the Deposit Date shall be deemed for purposes of this Agreement, the CSA, the Lease and the Trust Agreement to have occurred simultaneously.

3. The Lessee represents and warrants:

(a) It is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware and is duly qualified and authorized to do business and is in good standing in every other jurisdiction where the failure to so qualify would materially and adversely affect its operations, property, assets or condition, financial or otherwise, or the transactions contemplated by the Participation Documents.

(b) It has the full corporate power and authority and legal right to carry on its business as now conducted, and is duly authorized and empowered to execute and deliver this Agreement, the Lease, the Consent and the Indemnity Agreement ("Lessee Documents") and to fulfill and comply with the terms, conditions and provisions thereof.

(c) The Lessee Documents have been duly authorized, executed and delivered by it, and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitute legal, valid and binding instruments, enforceable in accordance with their terms.

(d) There are no actions, suits or proceedings, whether or not purportedly on its behalf, pending or (to its knowledge) threatened against or affecting it or any

of its property or rights, at law or in equity or before any commission or other administrative agency which, if determined adversely to it, would materially and adversely affect its condition, financial or otherwise, or its ability to perform its obligations under the Lessee Documents, and it is not in default with respect to any order or decree of any court or government commission, agency or instrumentality, the noncompliance with which would materially and adversely affect the operations, property, assets or condition, financial or otherwise, of the Lessee or the transactions contemplated by the Participation Documents.

(e) Neither the execution and delivery of the Lessee Documents nor the consummation of the transactions therein contemplated nor the fulfillment of nor the compliance with the terms and provisions thereof will conflict with or result in a breach of any of the terms, conditions or provisions of its Certificate of Incorporation or its By-laws (in each case as amended to date) or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which it is a party or by which it or its property may be bound, or constitute (with the giving of notice or the lapse of time or both) a default thereunder, or, pursuant to the provisions thereof, result in the



creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any of its property or upon the Equipment.

(f) It is not in default, and no event has occurred which, with the giving of notice or the lapse of time, or both, would be a default, under any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, agreement or other instrument evidencing the borrowing of money to which it is a party or by which it or its property may be bound.

(g) Neither the execution and delivery by it of the Lessee Documents nor the consummation by it of the transactions therein contemplated nor the fulfillment of nor the compliance with the terms and provisions thereof will conflict with or will result in a breach of any of the terms, conditions or provisions of any law or any regulation, order, injunction or decree of any court or governmental instrumentality or arbitrator binding on it, its operations or its properties.

(h) On or before the Deposit Date, this Agreement will have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. Such filing (together with the prior filing of the CSA, the CSA Assignment, the Lease and the Lease Assignment) will

protect the Agent's and the Trustee's interests in and to the units of Equipment and the Lease and no other filing (or giving of notice) is necessary in order to protect the interests of the Agent and the Trustee under the CSA, the CSA Assignment, the Lease or the Lease Assignment or in the units of Equipment in the United States of America or in any state of the United States or the District of Columbia.

(i) It is not entering into the Lessee Documents or any other transaction contemplated thereby directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it or the Owner, NAC, the Investor, the Permanent Investor or the Trustee in its individual capacity is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA"), and it will not sublease the Equipment subject to the Lease directly or indirectly to or in connection with any arrangement by it with any person which is at the time a party in interest with respect to the employee benefit plan the assets of which were used by the Owner or the Permanent Investor in making their investments pursuant to this Agreement, all within the meaning of ERISA.

(j) The Equipment will be used in interstate commerce.

(k) No authorization, consent or approval is required from the Interstate Commerce Commission or any other governmental or public body or authority of the United States or any of the states thereof or the District of Columbia in connection with the execution by it of the Lessee Documents or the fulfillment of or the compliance with the terms, conditions and provisions thereof by it or arising from the possession or use of the Equipment.

(l) It has not directly or indirectly taken any action and will not take any action the effect of which would bring the sale of the CSA Indebtedness or the investment by the Owner within the provisions of Section 5 of the Securities Act of 1933 or the registration provisions of the securities laws of any state, or would require the qualification of the CSA or any other instrument or agreement contemplated hereby or thereby under the Trust Indenture Act of 1939. It has not and will not offer any of the CSA Indebtedness or other securities to or solicit any offer to buy any thereof or approach or negotiate with any person other than banks as defined in Section 3(a)(2) of the Securities Act of 1933, insurance companies as defined in Section 2(13) of the

Securities Act of 1933 and other similar institutions that would qualify as an accredited investor pursuant to Regulation D under the Securities Act of 1933. It will not offer any of the CSA Indebtedness or other securities to or solicit any offer to buy any thereof from any other person or approach or negotiate with any other person in respect thereof so as to bring the sale of the CSA Indebtedness or the investment by the Owner within the provisions of Section 5 of said Securities Act or the registration provisions of any such state securities law, or would require such qualification under the Trust Indenture Act of 1939.

(m) It has filed all foreign, Federal, state and local tax returns which are required to be filed and has paid or made provisions for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by it, other than taxes which are being contested in good faith and which in the aggregate do not involve material amounts.

(n) It has furnished to the Permanent Investor and the Owner its Consolidated Balance sheets as of December 31, 1982, and December 31, 1983, and the related Consolidated Statements of Income for the respective years then ended. Such consolidated financial statements are in

accordance with the books and records of the Lessee and have been prepared in accordance with generally accepted accounting principles. The financial statements present fairly the financial condition of the Lessee at such dates and the results of its operations for such periods. There has not been any materially adverse change in the operations, property, assets or condition, financial or otherwise, of the Lessee since December 31, 1983.

(c) It has not directly or indirectly authorized or employed agents, brokers, finders or otherwise (other than Tiger Financial Services, Inc. and Tiger Capital Corporation) in connection with the placement of the CSA Indebtedness or the leasing of the Equipment pursuant to the Lease.

4. The Owner represents and warrants:

(a) It is a duly organized and validly existing corporation in good standing under the laws of the State of New York.

(b) It has the full corporate power, authority and legal right to carry on its business as now conducted and is duly authorized and empowered to execute and deliver this Agreement, the Indemnity Agreement and the Trust Agreement (the "Owner Documents") and to fulfill and comply with the terms, conditions and provisions thereof.

(c) The Owner Documents have been duly authorized, executed and delivered by it and, assuming due authorization, execution and delivery thereof by the other party or parties thereto, constitute legal, valid and binding instruments of the Owner, enforceable against the Owner in accordance with their terms.

(d) It has made its investment in the Equipment (pursuant to the Trust Agreement and this Agreement) with its general assets and not directly or indirectly with the assets of or in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan), all within the meaning of ERISA. It covenants that it will not transfer its interest acquired pursuant to this Agreement (and the Trust Agreement) directly or indirectly to or in connection with any arrangement or understanding by it in any way involving any employee benefit plan with respect to which it or the Lessee, NAC, the Permanent Investor, the Investor or the Trustee in its individual capacity is at the time a party in interest, all within the meaning of ERISA.

(e) It has not directly or indirectly offered or sold any interest in the CSA Indebtedness or other securities or beneficial interests in the Equipment to any

other person. It will not offer any other securities or beneficial interest in the Equipment to or solicit any offer to buy any thereof from any other person or approach or negotiate with any other person in respect thereof so as to bring the transactions contemplated by this Agreement within the provisions of Section 5 of the Securities Act of 1933.

5. The Permanent Investor and, in the case of subparagraph (b), the Investor, represents and warrants:

(a) It is acquiring its interest in the CSA Indebtedness for its own account for investment and not with a view to or for sale in connection with the distribution of the same, nor with any present intention of distributing or selling the same, provided however, that, subject to any requirement of law, the disposition of its property shall at all times be within its control.

(b) It represents that it has full power and authority to execute and deliver this Agreement and carry out its terms.

(c) It is not acquiring its interest in the CSA Indebtedness directly or indirectly with the assets of or in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which the Lessee, the

Investor, NAC, the Owner or the Trustee in its individual capacity is a party in interest, and with which such a transaction could be a prohibited transaction, all within the meaning of ERISA.

The Permanent Investor agrees that any transfer of all or part of its interest in the CSA Indebtedness shall be upon the express condition that the transferee thereof shall be bound by and subject to the terms and conditions of this Agreement, that such transfer shall not subject this transaction to the registration provisions of the Securities Act of 1933 or the securities laws of any state, that its transferee will make the representations set forth in Section 5(c) hereof and that its transferee will approve the Participation Documents. Prior to any such transfer, such Permanent Investor shall notify the Agent, the Trustee and the Lessee in writing thereof and the Agent shall cause to be prepared and delivered to such Permanent Investor an appropriate agreement, to be entered into among such Permanent Investor, such transferee and the Agent, evidencing such transfer upon the terms hereof.

6. The Trustee represents and warrants:

(a) It is a duly organized and validly existing national banking association in good standing under the laws of the United States.



(b) It has the full corporate power, authority and legal right to carry on its business as now conducted and is duly authorized and empowered to execute and deliver the Trust Agreement and, acting pursuant thereto, this Agreement, the CSA, the Lease, the Lease Assignment and the Acknowledgment of Notice of Assignment (the "Trustee Documents"), and to fulfill and comply with the terms, conditions and provisions thereof.

(c) The Trustee Documents have been duly authorized, executed and delivered by it and, assuming due authorization, execution and delivery thereof by the other party or parties thereto, constitute legal, valid and binding instruments, enforceable in accordance with their terms.

(d) No authorization, consent or approval from any governmental or public regulatory body or authority of the United States or of any of the states thereof or the District of Columbia is necessary for the execution, delivery and performance by it of the Trustee Documents.

(e) It represents that it is not entering into the Trustee Documents or any other transaction contemplated thereby directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan)

with respect to which it in its individual capacity or, to the best of its knowledge, the Lessee, the Owner, NAC, the Investor or the Permanent Investor is a party in interest, all within the meaning of ERISA.

7. The obligation of the Permanent Investor to make payment to the Agent pursuant to Paragraph 2 hereof and the obligation of the Agent to make payment to the Investor forthwith on the Deposit Date pursuant to Paragraph 2 hereof shall be subject to the receipt by the Agent and the Owner on or prior to the Deposit Date of the following documents, in form and substance satisfactory to the Agent, King & Spalding, special counsel to the Permanent Investor, the Owner and Haight, Gardner, Poor & Havens, special counsel to the Owner, and dated not more than 10 days prior to the Deposit Date:

(a) An opinion of Cravath, Swaine & Moore, special counsel for the Permanent Investor, to the effect that:

(i) this Agreement, assuming due authorization, execution and delivery by each of the parties, constitutes a legal, valid, binding and enforceable instrument;

(ii) the CSA and the Lease have each been duly authorized, executed and delivered and each is a legal, valid and binding instrument, enforceable in accordance with its terms;

(iii) the CSA Assignment, the Lease Assignment and the Consent have each been duly authorized, executed and delivered and each is a legal, valid, binding and enforceable instrument;

(iv) the Agent is vested with all right, title and interest of the Trustee purported to be assigned to it by the Lease Assignment; the Agent is vested with all right, title and interest of NAC purported to be assigned to it by the CSA Assignment and the Agent has a valid security interest therein, and the Equipment, at the time of delivery thereof to the Lessee under the CSA, was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA);

(v) this Agreement, the CSA, the CSA Assignment, the Lease and the Lease Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and no other filing or recordation is necessary for the protection of the rights of the Agent therein or in the Equipment in any state of the United States or the District of Columbia;

(vi) no authorization or approval from any governmental or public body or authority of the

United States or of any of the states thereof or of the District of Columbia is, to the knowledge of said special counsel, necessary for the execution, delivery and performance of the Participation Documents;

(vii) under the circumstances contemplated by this Agreement it is not necessary to register the CSA, the CSA Assignment or any certificate of interest delivered pursuant hereto under the Securities Act of 1933 or the securities laws of any state or to qualify the CSA or any other instrument or agreement contemplated hereby or thereby under the Trust Indenture Act of 1939;

(viii) the legal opinions referred to in subparagraphs (b), (c) and (d) of this Paragraph 7 are satisfactory in form and scope to said special counsel and that in its opinion the Permanent Investor and said special counsel are justified in relying thereon;

and as to such other matters incident to the transactions contemplated by this Agreement as the Permanent Investors may reasonably request.

(b) An opinion of counsel for the Owner to the effect set forth in subparagraphs (a), (b) and (c) of

Paragraph 4 and in clause (vi) of subparagraph (a) of this Paragraph 7, insofar as such matters relate to the Owner.

(c) An opinion of counsel for the Lessee to the effect set forth in subparagraphs (a), (b), (c), (d), (e), (g), (h) and (k) of Paragraph 3 hereof (which in the case of subparagraphs (d), (e), (g), (h) [only to the issue of the actual filing of this Agreement] and (k) may be to the best knowledge of such counsel after due inquiry) and to the further effect that no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects any property or interest therein of the Lessee now attaches or hereafter will attach to the Equipment or in any manner adversely affects or will adversely affect the right, title and interest of the Trustee, the Owner or the Agent therein.

(d) An opinion of counsel for the Trustee to the effect set forth in subparagraphs (a), (b), (c) and (d) of Paragraph 6 hereof (which in the case of subparagraph (d) may be to the best knowledge of such counsel after due inquiry).

(e) A certificate of an officer of the Lessee to the effect that (a) the representations and warranties of the Lessee contained in this Agreement are true on and as of the Deposit Date, with the same effect as though made

on such Date, (b) the Lessee is not currently in default under the Lessee Documents and no condition exists nor has any event occurred which with the giving of notice or the lapse of time or both would constitute such a default and (c) there has been no materially adverse change in the Lessee's operation, property, assets or condition, financial or otherwise, since December 31, 1983.

(f) A certificate of an officer or authorized attorney-in-fact of the Owner to the effect that (a) the Owner is not in default under the Owner Documents and no condition exists nor has any event occurred which with the giving of notice or the lapse of time or both would constitute such a default, (b) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the United States Internal Revenue Code of 1954) or, to the best of his knowledge and belief, other tax liens have been filed and are currently in effect against the Owner which could adversely affect the interests of the Agent in such Equipment or the Lease, (c) except for the CSA and the CSA Assignment, no mortgage, deed of trust or other lien of any nature whatsoever now in existence which now covers or affects or which may hereafter cover or affect any property or interest therein of the Owner now attaches or hereafter will attach to the Equipment or in any manner

adversely affects or will adversely affect the right, title and interest of the Agent therein and (d) the Owner's representations and warranties contained in this Agreement are true on and as of the Deposit Date with the same effect as if made on such date.

(g) A certificate or certificates of insurance in accordance with § 7.6 of the Lease.

(h) Executed counterparts of this Agreement.

(i) Notification (oral or written) that the Agent has received from the Lessee in immediately available funds an amount equal to \$20,908.06 as a payment under the Lease.

(j) Such other documents as the Agent, the Permanent Investor or its special counsel, may reasonably request.

In giving the opinions specified in subparagraphs (a), (b), (c) and (d) of this Paragraph 7, counsel may qualify its opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and to the further effect that the availability of the remedy of specific performance is within the discretion of the enforcing court. In giving the opinion specified in subparagraph (a) of this Paragraph 7, counsel may rely (a) on the opinion of counsel for NAC as to the authorization, execution and delivery by NAC of the Owner Documents, (b) on

NAC's warranties of title set forth in Section 14.5 of the CSA, and (c) on the opinion of counsel for the Owner, the Lessee or the Trustee as to any other matter governed by the law of any jurisdiction other than the State of New York or the United States. In giving the opinion specified in subparagraph (b) of this Paragraph 7, counsel may rely on the opinion of counsel for the Trustee as to all matters governed by the law of the State of Illinois.

The Deposit Date closing hereunder shall take place at the offices of King & Spalding, in Atlanta, Georgia.

8. The Agent will accept payments made to it by or for the account of the Trustee pursuant to the CSA and the CSA Assignment, on account of the principal of or accrued interest on the CSA Indebtedness, and will apply such payments promptly, first to the pro rata payment of interest payable on the CSA Indebtedness and second to the pro rata payment of the installments of the CSA Indebtedness in the order of maturity thereof until the same shall have been paid in full.

The Agent will accept all sums paid to it pursuant to Article 7 of the CSA with respect to Casualty Occurrences or a Termination (as defined in § 7 of the Lease) and will apply such sums to the pro rata prepayment of each of the installments of the CSA Indebtedness remaining unpaid (in proportion to the principal amount of CSA Indebtedness



represented by each such installment), without premium, together with interest accrued and unpaid on such prepaid CSA Indebtedness and will distribute such prepayment and interest thereon to the Permanent Investors. The Agent will furnish to the Permanent Investors a revised schedule of payments showing the reduction of their respective interests in the installments of the CSA Indebtedness remaining unpaid and the interest payable thereon.

Notwithstanding anything to the contrary contained herein, if a Declaration of Default (as defined in the CSA) is in effect, all moneys held by or coming into the possession of the Agent under the Participation Documents applicable to the payment or prepayment of CSA Indebtedness or interest thereon (including without limitation the net proceeds of any repossession and sale or lease of any unit of Equipment after deduction of all expenses, including reasonable counsel fees, incurred by the Agent in connection with such repossession and sale or lease or otherwise hereunder which shall not have been previously reimbursed to the Agent by the Trustee pursuant to the CSA) immediately shall be distributed by the Agent to the Permanent Investors pro rata and the Agent shall otherwise take such action as is referred to in this Paragraph 8.

All payments to be made by the Agent hereunder shall (subject to timely receipt by the Agent of available funds) be

made by bank wire transfer of Federal funds for credit to the account of the Permanent Investor at Trust Company Bank, Atlanta, Georgia, Account Number 8800088604, or as may be specified to the Agent in writing.

So long as, to the actual knowledge of the Agent, no default under Article 16 of the CSA shall have occurred and be continuing, the Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights or taking or refraining from taking any action which may be vested in it or which it may be entitled to assert or take, hereunder or under the CSA, the CSA Assignment, the Lease or the Lease Assignment except as otherwise specifically provided herein. The Agent shall not incur any liability hereunder or otherwise in acting upon any notice, certificate or other paper or instrument believed by it in good faith to be genuine and signed by the proper party or parties, or with respect to anything which it may do or refrain from doing in the exercise of its best judgment, or which may seem to it to be necessary or desirable in the premises, except liability resulting from its own misconduct or negligence. In case the Agent shall have actual knowledge of the occurrence of a Default howsoever arising, the Agent shall give prompt telephonic notice thereof, confirmed in writing, to the Trustee, the Owner, the Lessee, the Permanent Investors and NAC. The Agent shall take such

action (including enforcement actions) and assert such rights under the CSA and the Lease as shall be agreed upon by holders of a majority in principal amount of the CSA Indebtedness then outstanding; provided, however, that, notwithstanding the foregoing, the Agent shall not take any such action which would reduce the amount of principal or the rate of interest owing to a Permanent Investor pursuant hereto, or which would extend the time of payment of such principal or interest without the written consent of such Permanent Investor; and provided further, however, that the Agent will take all action required to be taken by it under the Participation Documents. In case the Agent is required to take action hereunder, it shall be indemnified against any liability or expense, including reasonable counsel fees, in connection with taking such action or asserting such rights by the Permanent Investors in proportion to their respective interests in the aggregate CSA Indebtedness then outstanding.

The Agent may consult with legal counsel of its own choice and shall not be under any liability for any action taken or not taken in good faith by it in accordance with the opinion of such counsel.

The Agent will promptly mail or deliver to each Permanent Investor one copy of all notices, statements, documents or schedules received by it from the Trustee or the Lessee pursuant to the Participation Documents.

All notices, instructions, directions and approvals to be delivered hereunder to the Agent by any Permanent Investor shall be in writing and signed by an officer, manager or assistant manager of such Permanent Investor. The Agent may rely on any notice, instruction, direction or approval so signed.

The Agent represents and warrants that it has all necessary corporate authority to enter into this Agreement and to execute and deliver the certificate or certificates of interest. The Agent does not make any representation or assume any responsibility with respect to the validity of the Participation Documents or any certificate of interest (except with respect to its own execution thereof) or any of the matters covered thereby or the value of or the title to the Equipment.

In the event of any dispute with respect to the delivery or ownership or right to possession of funds or documents at any time held by the Agent hereunder or with respect to title to any unit of Equipment, the Agent is hereby authorized and directed to retain, without liability to anyone, all or any of such funds or documents of title until such dispute shall have been settled either by agreement of the Permanent Investors or by final order, decree or judgment of a court of competent jurisdiction. The Agent, if requested so to

do by Permanent Investors holding more than 50% of the then outstanding CSA Indebtedness, shall invest and reinvest such funds as directed by such holders.

The Agent shall be entitled to terminate its duties and responsibilities hereunder by giving written notice to each Permanent Investor that it desires to terminate such duties and responsibilities on a date (at least 30 days subsequent to the giving of such notice) stated in said notice. If, prior to the date stated in said notice, Permanent Investors holding interests totaling more than 50% of the CSA Indebtedness then outstanding shall have requested in writing that the Agent assign to a person or institution designated by such holders all right, title and interest of the Agent under the CSA and the CSA Assignment and in and to the Equipment and the Lease and the Lease Assignment, the Agent shall comply with such request. In the event that such request is not received by the Agent on or before the date designated in said notice, the Agent shall be entitled to appoint a successor to act hereunder (which successor shall be a bank or trust company located in the Borough of Manhattan, City and State of New York, or in Chicago, Illinois, or in Atlanta, Georgia, having capital and surplus aggregating at least \$100,000,000) and to assign to such successor, subject to the provisions of this Agreement, all such right, title and interest of the Agent. Upon such

assignment by the Agent to a person or institution designated by such Permanent Investors or, in the absence of such designation, to a successor appointed by the Agent, the Agent shall thereupon be relieved of all duties and responsibilities hereunder.

9. The Lessee will deliver or cause to be delivered to the Agent, the Owner, the Trustee and each Permanent Investor (a) as soon as available and in any event within 90 days after the end of each of its fiscal years, a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of the Lessee stating that he has reviewed the activities of the Lessee during such year and that to the best of his knowledge the Lessee during such year has kept, observed, performed and fulfilled each and every covenant, obligation and condition contained in the Lessee Documents or, if an Event of Default (as defined in the Lease) shall exist or have existed or if an event has occurred and is continuing which with the giving of notice or the lapse of time or both would constitute an Event of Default, specifying such Event of Default and all such events and the nature and status thereof and (b) (i) as soon as available, and in any event within 60 days after the end of the first, second and third quarterly accounting periods in each fiscal year of the Lessee, copies of the Unaudited Consolidated Balance Sheet of the

Lessee as of the end of such accounting period and copies of the related Unaudited Consolidated Statements of Income of the Lessee for the portion of its fiscal year then ended, all in reasonable detail, accompanied by a cover letter from the Treasurer, (ii) as soon as available, and in any event within 90 days after the end of each of its fiscal years, copies of the Consolidated Balance Sheet of the Lessee as of the end of such fiscal year and copies of the related Consolidated Statements of Income and Changes in Financial Position for such fiscal year, all in reasonable detail, audited by independent certified public accountants of recognized national standing and stating in comparative form the consolidated figures as of the end of the previous fiscal year, (iii) as soon as available, a copy of each Current Report on Form 8-K (or its successor), Quarterly Report on Form 10-Q (or its successor) and Annual Report on Form 10-K (or its successor), if any, filed with the Securities and Exchange Commission by the Lessee, (iv) as soon as available, a copy of each prospectus, if any, filed by the Lessee with the Securities and Exchange Commission pursuant to Rule 424(b) (or its successor) of the Commission under the Securities Act of 1933, as amended, and (v) from time to time such other information as any Permanent Investor or the Owner may reasonably request.

The Lessee will permit representatives of the Trustee, the Agent, any Permanent Investor and the Owner, at such party's risk and expense, with respect to matters reasonably related to the transactions contemplated by this Agreement or to the financial condition of the Lessee, and when accompanied by a representative of the Lessee, to visit and inspect any of the properties of the Lessee, to examine its corporate books and financial records (except to the extent such examination would result in the loss by the Lessee of a legally recognized privilege against compulsory disclosure) and to discuss its affairs, finances and accounts with its officers and independent public accountants all at such reasonable times and as often as may be reasonably requested.

10. The Lessee shall pay, or to cause to be paid in connection with this Amended and Restated Participation Agreement and Amendment, (i) the reasonable fees and disbursements of King & Spalding as special counsel for the Permanent Investors and the cost of producing and reproducing the Participation Agreement, this amendment and restatement thereof, the Lease, the Trust Agreement, the CSA, the CSA Assignment, the Lease Assignment, the Consent and the Indemnity Agreement, (ii) the reasonable fees and disbursements of Cravath, Swaine & Moore in connection with the opinion delivered, pursuant to Paragraph 7(a) hereof, (iii) the



reasonable fees and disbursements of Haight, Gardner, Poor & Havens, special counsel to the Owner, and Sullivan & Cromwell, special tax counsel to the Owners, (iv) the reasonable routine and ordinary fees, costs and disbursements of the Agent and the Trustee (including the cost of delivery for the certificates of interest and counsel fees pursuant to this Agreement), (v) the costs of filing, recording and giving public notice or publication as to such filing and recording of this Agreement, the Lease, the CSA, the CSA Assignment and the Lease Assignment and any amendments or supplements thereto with the Interstate Commerce Commission and (vi) any other reasonable expenses incurred by the parties hereto in connection herewith. The Permanent Investor, the Investor, the Trustee, the Owner and the Agent shall have no liability for any of the aforesaid fees, costs, disbursements and expenses or for any other expenses. The Lessee agrees to pay all expenses, costs and fees in connection with the preparation, execution, delivery, recording and filing of, and the giving of public notice or publication with respect to any amendments, supplements or waivers with respect to the Participation Documents and the transactions contemplated thereby entered into after the Deposit Date or in connection with any permanent financing (provided, however, that if the Owner has requested any such amendment, supplement or waiver, the Owner shall reimburse the Lessee for such expenses, costs and fees).

11. All documents and notices deliverable to the Lessee hereunder shall be delivered to it at P.O. Drawer D, Williamsburg, Virginia 23187, attention of Treasurer.

All documents, notices and funds deliverable hereunder to the Agent shall be delivered to it at its address at 135 South LaSalle Street, Chicago, Illinois 60690, attention of Corporate Trust Division.

All documents and notices deliverable to the Owner shall be delivered to it at 260 Long Ridge Road, Stamford, Connecticut 06904, Attention of Manager-Operations, Transportation Financing Department, with a separate copy to the attention of each of Manager-Rail Component and Contracts Administration-Rail Component.

All documents, notices and funds deliverable hereunder to the Trustee shall be delivered to it at its address at 120 South LaSalle Street, Chicago, Illinois 60603, attention of Corporate Trust Department.

All documents, notices and funds deliverable to the Investor shall be delivered to it at 23 Wall Street, New York, New York, Attention: Mr. Frank Teague.

All documents, notices and funds deliverable to the Permanent Investor shall be delivered to it at its address at Suite 1800, First Atlanta Tower, 2 Peachtree Street, N.W., Atlanta, Georgia 30383-3501.

12. In the event that the Lessee or the Trustee shall have knowledge of an Event of Default under the Lease or an event of default under the CSA, such party shall give prompt telephonic notice (confirmed in writing) thereof to the other and to the Agent, the Permanent Investor and the Owner. Knowledge shall mean actual knowledge of an officer or responsible department head of the Lessee or actual knowledge of an officer or an employee in the Corporate Trust Department of the Trustee.

13. Each and all of the representations, warranties, covenants and agreements herein made (except for the representations made by the Trustee under Paragraph 6 hereof for which it shall be liable in its individual capacity) on the part of the financial institution acting as Trustee hereunder are made and intended not as personal representations, warranties, covenants and agreements by said institution or for the purpose or with the intention of binding said institution personally but are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) and (except as aforesaid) this Agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be

asserted or enforceable against said institution or the Owner on account of any representation, warranty, covenant or agreement herein of the Trustee (except as aforesaid or in the case of gross negligence or willful misconduct of the Trustee), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee, the Agent, the Investor and the Permanent Investors or any person claiming by, through or under any of them; provided, however, that the Lessee, the Agent, the Investor and the Permanent Investors or any person claiming by, through or under any of them making claim hereunder may look to said Trust Estate for satisfaction of the same. Notwithstanding the foregoing, the Owner agrees with the other parties hereto to discharge all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Owner described in Section 13.3 of the CSA (unless the validity thereof shall be contested as provided in said Section 13.3).

14. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The terms of this Agreement and the rights and obligations of the parties hereto hereunder may be changed only by an agreement in writing, signed by the party against whom enforcement of such charge is sought.

15. The Owner agrees, for the benefit of the Permanent Investors, to take all necessary action, including, without limitation, payment of funds, to enable the Trustee to discharge pursuant to the proviso in Section 13.3 of the CSA the claims, liens, charges or security interests referred to in said paragraph claimed by any party from, through or under the Owner (unless the validity thereof shall be contested as provided in said Section 13.3).

16. The Trustee and the Agent, as assignee of NAC, agree that, subject to payment by the Permanent Investor of the amount to be paid by it pursuant to Paragraph 2 hereof, the CSA shall be amended as follows:

(a) Section 4.4 thereof is deleted and the following is substituted therefor:

4.4 CSA Indebtedness; Payment Dates; Interest.

"(a) The installments of the CSA Indebtedness shall be payable quarterly on January 1, April 1, July 1 and October 1 in each year, commencing October 1, 1984, until the last such installment has been paid (each such date being herein called a "Payment Date"). If any Payment Date is not a Banking Day, the payment shall be payable on the next succeeding Banking Day. The unpaid balance of the CSA

Indebtedness shall bear interest from and including the Deposit Date as defined in the Participation Agreement at a rate of interest per annum for each Interest Period equal to the Floating Rate. For purposes hereof, (i) "Interest Period" shall mean (I) from the date hereof through June 30, 1989, a period of time that commences on the Deposit Date or on the last day of the immediately preceding Interest Period and ends (A) on the date one, two or three months thereafter as the Borrower may elect, in the case of a LIBOR Option, an Adjusted C/D Rate Option or a Federal Funds Rate Option or (B) on the date the Lessee gives notice to Barclays Bank International Limited (the "Permanent Investor") in the case of a Prime Rate Option, provided that any Interest Period that would otherwise end on a day that is not a Banking Day shall be extended to the next succeeding Banking Day and (II) thereafter a period of time that commences on the last day of the immediately preceding Interest Period and ends 6 months thereafter; (ii) "Floating Rate" shall mean (A) from the date hereof through June 30, 1985, (w) the Prime Rate or (x) the LIBOR Rate plus one-fourth of one percent (1/4%) or (y) the Adjusted C/D Rate plus

one-fourth of one percent ( $1/4\%$ ) or (z) the Federal Funds Rate plus the Federal Funds Increment plus three-eighths of one percent ( $3/8\%$ ); (B) from July 1, 1985 through June 30, 1987, (w) the Prime Rate or (x) the LIBOR Rate plus three-eighths of one percent ( $3/8\%$ ) or (y) the Adjusted C/D Rate plus three-eighths of one percent ( $3/8\%$ ) or (z) the Federal Funds Rate plus the Federal Funds Increment plus one-half of one percent ( $1/2\%$ ); (C) from July 1, 1987 through June 30, 1989, (w) the Prime Rate plus one-eighth of one percent ( $1/8\%$ ) or (x) the LIBOR Rate plus one-half of one percent ( $1/2\%$ ) or (y) the Adjusted C/D Rate plus one-half of one percent ( $1/2\%$ ) or (z) the Federal Funds Rate plus the Federal Funds Increment plus five-eighths of one percent ( $5/8\%$ ); in each case (A, B and C) as the Lessee shall select by giving notice to the Permanent Investor, in the case of a LIBOR Option, at least two Banking Days prior to the beginning of each Interest Period, and otherwise prior to the beginning of each Interest Period, at which time the Lessee shall select the Floating Rate for a one, two or three months period, or if the Lessee shall fail to so select, the same rate option and time period in effect for the preceding Interest

Period; (D) thereafter the LIBOR Rate plus five percent (5%); (iii) "Prime Rate" shall mean the rate of interest announced by the Permanent Investor from time to time as its Prime Rate, with any change in the rate of interest resulting from a change in the Prime Rate being effective as of the opening of business on the effective date of a change in the Prime Rate announced by the Permanent Investor; (iv) "LIBOR Rate" applicable to any Interest Period shall mean the rate per annum quoted by the Permanent Investor as its one-month, two-month, three-month or six-month LIBOR Rate, as the case may be, for the amount of CSA Indebtedness for the succeeding Interest Period; (v) "Adjusted C/D Rate" applicable to any Interest Period shall mean the rate per annum quoted by the Permanent Investor as its one-month, two-month or three-month Adjusted C/D Rate, as the case may be, for the amount of CSA Indebtedness for the succeeding Interest Period; (vi) "Federal Funds Rate" applicable to any Interest Period shall mean the rate per annum quoted by the Permanent Investor as its Federal Funds Rate, provided that the Federal Funds Rate shall not be higher than 10 basis points over the average federal funds overnight rate as quoted by



the Federal Reserve Bank of New York, for the business day to which the Federal Funds Rate applies; (vii) "Federal Funds Increment" shall mean the per annum interest rate derived from the following table:

<u>Federal Funds Rate</u>	<u>Increment</u>		
	<u>One Month</u>	<u>Two Month</u>	<u>Three Month</u>
0-5%	.01%	.02%	.03%
5.00001-6	.02	.03	.05
6.00001-7	.02	.04	.06
7.00001-8	.03	.05	.08
8.00001-9	.03	.07	.10
9.00001-10	.04	.08	.13
10.00001-11	.05	.10	.16
11.00001-12	.06	.12	.19
12.00001-13	.07	.14	.22
13.00001-14	.08	.17	.25
14.00001-15	.10	.19	.29
15.00001-16	.11	.22	.33
16.00001-17	.12	.24	.37
17.00001-18	.14	.27	.42
18.00001-19	.15	.31	.47
19.00001-20	.17	.34	.52
20.00001-21	.19	.37	.57
21.00001-22	.21	.41	.63
22.00001 and above	To be negotiated		

(viii) "LIBOR Option" shall mean any selection hereunder by the Lessee of a Floating Rate based on LIBOR; (ix) "Adjusted C/D Rate Option" shall mean any selection hereunder by the Lessee of a Floating Rate based on the Adjusted C/D Rate; (x) "Federal Funds Rate Option" shall mean any selection hereunder by the Lessee of a Floating Rate based on the Federal

Funds Rate; (xi) "Prime Rate Option" shall mean any selection hereunder by the Lessee of a Floating Rate based on the Prime Rate; (xii) "Banking Day" shall mean any day on which commercial banks are open for domestic and international business (including dealings in dollar deposits) in London and New York City and Chicago, Illinois. Where the Prime Rate Option or Federal Funds Rate Option is selected, to permit calculation of the Floating Rate prior to the end of any Interest Period, it is agreed that the calculation will be made on the assumption that the Prime Rate or the Federal Funds Rate does not change for the last 10 days of the Interest Period. The effect of actual changes in the Prime Rate or the Federal Funds Rate occurring in the last 10 days of the Interest Period will be reflected as an addition to or subtraction from, as the case may be, the interest payable on the succeeding Payment Date. The amount of principal of the CSA Indebtedness payable on each Payment Date shall be calculated to be substantially in proportion to the amount and allocation of principal on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal shall

completely amortize the CSA Indebtedness at maturity on January 1, 2007.

Interest on the unpaid balance of the CSA Indebtedness shall be payable in arrears to the extent accrued at the end of each Interest Period, provided, however that when the end of any Interest Period is not a Payment Date, such payment shall be made on the next succeeding Payment Date and such interest due shall bear interest at the Floating Rate for the subsequent Interest Period(s) until the next succeeding Payment Date.

(b) If, after the date of this Agreement, the adoption of any applicable law, rule or regulation, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof or compliance by any Permanent Investor with any request or directive (whether or not having the force of law) of any such authority shall make it unlawful or impossible for such Permanent Investor to make, maintain or fund its Investment on the basis of the LIBOR Rate or the Adjusted C/D Rate, then such Investor forthwith shall

so notify the Trustee and the Lessee. Upon receipt of such notice and until such Permanent Investor notifies the Trustee and the Lessee that such notice is no longer effective, the Floating Rate shall be the applicable Prime Rate Option or Federal Funds Rate Option, as the Lessee shall select by giving the notice described in subsection (a) of this Section 4.4, commencing on either (a) the last day of the then current Interest Period if such Permanent Investor may lawfully continue to fund and maintain its Investment on such basis to such day or (b) immediately if such Permanent Investor may not lawfully continue to fund and maintain its Investment on such basis to such day.

(c) If (A) the adoption by the Board of Governors of the Federal Reserve System on August 15, 1980, of revisions to Regulation D or (B) after the date hereof, the adoption of, or any change in, any applicable law, rule or regulation or the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof or compliance by any Permanent Investor with any request or directive of any such

authority, central bank or comparable agency (whether or not having the force of law):

(i) shall subject such Permanent Investor to any tax, duty or other charge with respect to its Investment if the Floating Rate is to be determined on the basis of the LIBOR Rate or the Adjusted C/D Rate or shall change the basis of taxation of payments to such Permanent Investor of the principal of or interest on its Investment or in respect of its Investment (except for changes in the rate of tax on the overall net income of such Investor imposed by the jurisdiction in which its principal executive office is located); or

(ii) shall impose, modify or deem applicable any reserve (including, without limitation, any imposed by the Board of Governors of the Federal Reserve System), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, such Permanent Investor in the London interbank market or the market for certificates of deposit in the United States or shall impose on such Permanent Investor or the London interbank

market or the market for certificates of deposit in the United States any other condition affecting its obligation to make or maintain its Investment in the London interbank market or the market for certificates of deposit in the United States;

and the result of any of the foregoing is to increase the cost to such Permanent Investor of making or maintaining its Investment or to reduce the amount of any sum received or receivable by it in respect thereof by an amount deemed by such Permanent Investor to be material, then within fifteen (15) days after demand by such Permanent Investor to the Trustee and the Lessee, the Trustee will pay to such Permanent Investor such additional amount or amounts as will compensate such Permanent Investor for such increased cost or reduction. Such Permanent Investor will promptly notify the Trustee and the Lessee of any event of which it has knowledge, occurring after the date hereof, which will entitle it to compensation pursuant to this paragraph (c). A certificate of any Permanent Investor setting forth the basis for determining such additional amount or amounts necessary to compensate such Permanent

Investor shall be conclusive in the absence of manifest error. Upon receipt by the Lessee of a demand from any Permanent Investor under this paragraph (c), the Lessee may elect, upon three Banking Days' notice to such Permanent Investor, to have the Floating Rate be equal to the applicable Prime Rate Option or Federal Funds Rate Option; provided, that the Trustee shall reimburse such Permanent Investor on demand for any loss incurred by it as a result of such election, including, without limitation, any loss incurred in liquidating or employing deposits from third parties for the period after such election takes effect to the end of the applicable Interest Period."

(b) Section 4.5 thereof is deleted and the following is substituted therefor:

"4.5. Calculation of Interest. Interest under this Agreement shall be calculated on the basis of a 360-day year for the actual number of days elapsed in the Interest Period."

(c) Section 4.6 is deleted and the following is substituted therefor:

"4.6. Penalty Interest. The Trustee will pay interest at the rate of 2% per annum above the Prime

Rate ("Penalty Rate"), upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding."

17. The parties to the Lease agree that, subject to the payment by the Permanent Investor of the amounts to be paid by it pursuant to Paragraph 2 hereof, the Lease shall be amended as follows:

(a) In § 3.1, the reference to Section 4.4(d) of the CSA is changed to Section 4.4(c) of the CSA.

(b) The second sentence of § 3.2 is deleted and the following is substituted therefor: "The term "business day" as used herein means any day on which commercial banks are open for domestic and international business (including dealings in dollar deposits) in London and New York City and Chicago, Illinois."

(c) In § 19, the words "1% per annum above the Floating Rate" are deleted and the following is substituted therefor: "2% per annum above the Prime Rate"; and the words "of twelve 30-day months" are deleted and the following is substituted therefor: "for the actual number of days elapsed."



The parties to the Lease further acknowledge that all references in the Lease to the Floating Rate (as defined in Section 4.4 of the CSA) are to the Floating Rate as defined in Section 4.4 of the CSA, as amended hereby.

18. Except as amended hereby, the CSA and the Lease shall remain in full force and effect.

19. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by all the parties so long as each party hereto shall have executed one counterpart hereof, which shall be effective upon delivery thereof to King & Spalding at its offices in Atlanta, Georgia.

20. The parties hereto agree that, subject to the consent of the Owner, which consent will not be unreasonably withheld, the Lessee may provide other investors which may, on any Payment Date after June 30, 1987, acquire all the Permanent Investor's interest in the CSA Indebtedness. In connection with any such acquisition, this Agreement, the Lease and the CSA will be amended to set forth the terms to be agreed upon by such other investors and the parties hereto. Such amendments may include, among other things, changes in the interest rate and the schedule of payments applicable to the CSA Indebtedness as well as corresponding changes in the rentals and Casualty and Termination Values.

The Permanent Investor agrees, notwithstanding anything to the contrary in the CSA or the certificate of interest, to accept prepayment of its interest in the CSA Indebtedness on any Payment Date after June 30, 1987, with interest paid to the date of prepayment, without premium, if and when requested to do so in a written notice given by the Lessee to all parties hereto, not less than 60 days prior to such date of prepayment, in order to accomodate such subsequent financing. In that connection, the Permanent Investor agrees to provide whatever releases and assurances may be reasonably requested by the Lessee to accomodate such permanent financing. The Lessee agrees to pay all costs, fees and expenses in connection with any such acquisition of the Permanent Investor's interest in the CSA Indebtedness.

21. Lessee hereby agrees to indemnify the Owner on an after-tax basis for any adverse tax consequences, including without limitation, the loss of any tax benefits contemplated by Section 1 of the Indemnity Agreement, which the Owner may suffer as a result of the execution, delivery or consummation of this Agreement and the amendments contained herein, or of any future amendments made pursuant to Section 20 hereto.

IN WITNESS WHEREOF, the parties hereto have caused  
this Agreement to be executed by duly authorized signatories as  
of the date first above written.

BADISCHE CORPORATION,

Sworn to and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 1984.

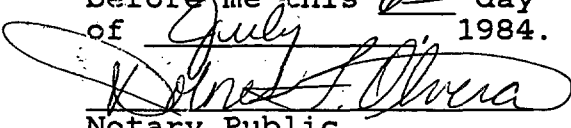
By: \_\_\_\_\_  
Treasurer

\_\_\_\_\_  
Notary Public

LA SALLE NATIONAL BANK,

Sworn to and subscribed  
before me this 6th day  
of July, 1984.

By:   
Vice President

  
Notary Public

My Commission Expires April 26, 1987

GENERAL ELECTRIC CREDIT  
CORPORATION,

Sworn to and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 1984.

By: \_\_\_\_\_  
Attorney-in-fact

\_\_\_\_\_  
Notary Public

EXCHANGE NATIONAL BANK OF  
CHICAGO, not in its individual  
capacity but solely as Trustee  
under the aforesaid Trust  
Agreement,

Sworn to and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 1984.

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_  
First Vice President

MORGAN GUARANTY TRUST COMPANY  
OF NEW YORK,

Sworn to and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 1984.

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_  
Asst. Vice President

BARCLAYS BANK INTERNATIONAL  
LIMITED, Atlanta Agency

Sworn to and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 1984.

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_  
First Vice President  
and Manager

Sworn to and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 1984.

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_  
Vice President

## APPENDIX I

Conditional Sale Agreement dated as of June 1, 1981,  
as amended (Secured by Lease Obligations of  
BADISCHE CORPORATION)  
Floating Interest Rate

### CERTIFICATE OF INTEREST

LA SALLE NATIONAL BANK, as agent ("Agent"), hereby acknowledges receipt from BARCLAYS BANK INTERNATIONAL LIMITED ("Investor") of \$8,271,319.65, such sum having been paid by the Investor under and pursuant to the terms and conditions of an Amended and Restated Participation Agreement and Agreement dated as of July 1, 1984, ("Participation Agreement"), among BADISCHE CORPORATION ("Lessee"), the Agent, GENERAL ELECTRIC CREDIT CORPORATION ("Owner"), EXCHANGE NATIONAL BANK OF CHICAGO, as trustee ("Trustee"), MORGAN GUARANTY TRUST COMPANY OF NEW YORK and the Investor. By reason of such payment the Investor has an interest in a principal amount equal to such sum in and to (i) the Conditional Sale Agreement dated as of June 1, 1981, as amended ("CSA"), between NORTH AMERICAN CAR CORPORATION ("NAC") and the Trustee, the railroad equipment covered by the CSA and the CSA Indebtedness (as defined in the CSA), (ii) the Agreement and Assignment dated as of June 1, 1981, between NAC and the Agent, (iii) the right, security title and interest of the Agent in and to the Lease of Railroad Equipment dated as of June 1, 1981, as amended ("Lease") between the Lessee and the Trustee, (iv) the Assignment of

Lease and Agreement dated as of June 1, 1981, between the Trustee and the Agent, to which the Lessee acknowledged and consented pursuant to the Consent and Agreement attached thereto and (v) all cash and other property from time to time held by the Agent under the Participation Agreement, except to the extent that installments of such principal amount shall have been paid.

Under the terms of the CSA, subject to the rights of prepayment contained therein in the event of a Casualty Occurrence and/or a Termination (as defined in the Lease), and the Participation Agreement (i) such principal amount is payable in 90 consecutive quarterly installments on each January 1, April 1, July 1 and October 1, commencing on October 1, 1984, until the last such installment has been paid, (ii) such principal amount bears interest from the date hereof on the unpaid portion thereof from time to time outstanding, payable on each January 1, April 1, July 1 and October 1, commencing October 1, 1984, until such principal amount shall have been paid in full, at the Floating Rate (as defined in Section 4.4 of the CSA) and (iii) all such principal and interest remaining unpaid after the same shall have become due and payable bears interest at the rate of 2% per annum above the Prime Rate (as defined in Section 4.4 of the CSA). All such interest shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The Agent has furnished or promptly will furnish to the Investor a schedule

of payments reflecting the dates and amounts of principal payments to be made in respect of the interests of the Investor. All payments received by the Agent in accordance with the terms of the Participation Agreement and the CSA shall be disbursed by the Agent in accordance with the terms and conditions of the Participation Agreement.

The interests of the Investor referred to in this Certificate of Interest may not be transferred except in the manner provided in the Participation Agreement and subject to the terms, conditions and limitations provided therein.

Dated:                      , 19   .

LA SALLE NATIONAL BANK, as  
Agent under the Participation  
Agreement,

By: \_\_\_\_\_  
Authorized Officer

INQUIRY SHOULD BE MADE TO THE AGENT  
IF CERTIFICATION AS TO BALANCE DUE HEREUNDER IS REQUIRED.

AMENDED AND RESTATED PARTICIPATION AGREEMENT AND AMENDMENT

AMONG

BADISCHE CORPORATION,

Lessee,

LA SALLE NATIONAL BANK,

Agent

GENERAL ELECTRIC CREDIT CORPORATION,

Owner,

EXCHANGE NATIONAL BANK OF CHICAGO,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement  
dated as of the date hereof with  
the Owner,

MORGAN GUARANTY TRUST COMPANY OF NEW YORK,

Investor,

and

BARCLAYS BANK INTERNATIONAL LIMITED, Atlanta Agency,

Permanent Investor

Dated as of July 1, 1984

Floating Rate Conditional Sales Indebtedness  
Due January 1, 2007

[Covering 184 NAC Aluminum Covered Hopper Cars]

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AMENDED AND RESTATED PARTICIPATION AGREEMENT AND AMENDMENT ("Agreement") dated as of July 1, 1984, among BADISCHE CORPORATION, a Delaware corporation ("Lessee"), LA SALLE NATIONAL BANK, a national banking association ("Agent"), GENERAL ELECTRIC CREDIT CORPORATION, a New York corporation ("Owner"), EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, acting not in its individual capacity but solely as trustee ("Trustee") under a Trust Agreement dated as of June 1, 1981 with the Owner ("Trust Agreement"), MORGAN GUARANTY TRUST COMPANY OF NEW YORK ("Investor"), and BARCLAYS BANK INTERNATIONAL LIMITED, Atlanta Agency (the "Permanent Investor") and, together with its successors and assigns, ("Permanent Investors").

WHEREAS the parties hereto (other than the Permanent Investor) have entered into a Participation Agreement dated as of June 1, 1981 (the "Participation Agreement") providing for the purchase of 184 aluminum covered hopper cars (the "Equipment"), as described in Annex B to the CSA (as hereinafter defined), and their lease to the Lessee;

WHEREAS pursuant to the Trust Agreement and the authorization and direction of the Owner; the Trustee has purchased the Equipment from North American Car Corporation ("NAC") pursuant to a Conditional Sale Agreement ("CSA") dated as of June 1, 1981; and NAC has retained a security interest in the units of Equipment constructed, sold and delivered by it pursuant to the CSA until the Trustee fulfills its obligations under the CSA;

WHEREAS the Lessee has leased from the Trustee all the units of the Equipment delivered and accepted under the CSA, pursuant to a Lease of Railroad Equipment ("Lease") dated as of June 1, 1981;

WHEREAS the Investor has furnished 63.23% of the cost of the Equipment by investing in the CSA Indebtedness (as defined in Section 4.3(b) of the CSA), and the owner has furnished 36.77% of the costs of such Equipment by making funds available to the Trustee under the Trust Agreement;

WHEREAS the Lessee has agreed to and has indemnified the Owner pursuant to an Indemnity Agreement ("Indemnity Agreement") dated as of June 1, 1981, between the Lessee and the Owner, against certain losses, liabilities and expenses incurred by or assessed against the Owner;

WHEREAS the security interest of NAC in the Equipment has been assigned to the Agent, acting on behalf of the Investor, pursuant to an Agreement and Assignment dated as of June 1, 1981 ("CSA Assignment"), and the Lease has been assigned to the Agent pursuant to an Assignment of Lease and Agreement ("Lease Assignment") dated as of June 1, 1981, until the Trustee fulfills all its obligations under the CSA; and the Lessee has acknowledged and consented thereto pursuant to the Consent and Agreement dated as of June 1, 1981 ("Consent");

WHEREAS the CSA, the CSA Assignment, the Lease and the Lease Assignment were filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on August 14, 1981, at 10:25 a.m., recordation numbers 13221, 13221-A, 13221-B, and 13221-C, respectively;

WHEREAS the Permanent Investor proposes to acquire the Investor's interests in the Outstanding CSA Indebtedness (as hereinafter defined), and in connection therewith, the interest rate on the CSA Indebtedness will be changed to the Floating Rate as defined in Section 4.4 of the CSA, as amended by Paragraph 16 hereof;

WHEREAS the parties hereto desire to amend and restate the Participation Agreement and amend the CSA and the Lease as herein set forth;

NOW, THEREFORE, in consideration of the agreements and the covenants hereinafter contained, the parties hereby agree as follows:

1. The Trustee and the Owner have entered into the Trust Agreement, and the Trustee has entered into the CSA and pursuant thereto has purchased the units of Equipment described in Annex B to the CSA having an aggregate Purchase Price of \$14,298,399.22.

The Lessee has assigned, transferred, and set over unto the Trustee and its successors and assigns all the right, title and interest of the Lessee in and to the Equipment and to any contracted arrangements with NAC insofar as such arrangements relate to the Equipment.

The parties hereto agree that, subject to the payment by the Permanent Investor of the amounts to be paid by it

pursuant to Paragraph 2 hereof, from and after the Deposit Date (as hereinafter defined) (a) the Investor hereby transfers and assigns to the Permanent Investor all its right, title and interest in and to the CSA Indebtedness, (b) the Participation Agreement shall be amended and restated and the CSA and the Lease shall each be amended as set forth herein and (c) unless the context otherwise requires, the terms "CSA" and "Lease", as used in this Agreement, the CSA and the Lease, the Trust Agreement, the CSA Assignment, the Lease Assignment, the Consent and the Indemnity Agreement (collectively, "Participation Documents"), shall mean, respectively, the CSA and the Lease, each as amended hereby, and the term "Participation Agreement" as used in any of the Participation Documents, other than this Agreement, shall mean this Agreement. By its execution and delivery of this Agreement, the Owner authorizes the Trustee to execute and deliver this Agreement and to carry out its terms.

2. Subject to the terms and conditions hereof, the Permanent Investor will pay to the Agent, in immediately available funds, not later than 11:00 a.m., Chicago time, on July 9, 1984 ("Deposit Date"), an amount equal to \$8,271,319.65. All deposits to be made hereunder by the Permanent Investor with the Agent shall be paid to the Agent at the following address and shall be accompanied by the following

information: La Salle National Bank, Corporate Trust Division, 135 La Salle Street, Chicago, Illinois 60690 for credit to the account of Badische Corporation Lease Financing Trust Account No. 61-5620-50-7.

Upon payment to the Agent of the amount required to be paid by the Permanent Investor pursuant to this Paragraph 2 on the Deposit Date, the Agent will execute and deliver to such Permanent Investor (or, upon the written request of such Permanent Investor, to the nominee or nominees of such Permanent Investor), a certificate or certificates of interest with respect to such payment, substantially in the form annexed hereto as Appendix I, containing the appropriate information and dated the Deposit Date.

Subject to the terms and conditions hereof, upon payment to the Agent on the Deposit Date of the amount to be paid by the Permanent Investor pursuant hereto, the Agent will pay to the Investor an amount (the "Take Out Amount") equal to the sum of the aggregate unpaid CSA Indebtedness represented by the certificates of interest theretofore delivered to the Investor under the Participation Agreement (the "Outstanding CSA Indebtedness"); and the Investor simultaneously with the payment to it of such amount, will surrender such certificates to the Agent for cancellation; it being understood that the Trustee will pay to the Investor on the Deposit Date accrued and

unpaid interest to the Deposit Date on the aggregate amount of Outstanding CSA Indebtedness transferred by the Investor at the rates provided in its certificates of interest (the "Debt Rate" as defined therein being deemed to be the Debt Rate as defined in the CSA prior to its amendment pursuant to this Agreement) and the Investor agrees to look solely to the Trustee for such payment on the Deposit Date.

The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Atlanta, Georgia, Chicago, Illinois, or New York, New York, are authorized or obligated to <sup>or etc</sup> remain closed. All interest under this Agreement (including payments made pursuant to Paragraph 2 hereof) shall be calculated on the basis of a 360-day year for the actual number of days elapsed. At least eight days prior to each date on which interest is due on the CSA Indebtedness pursuant to Section 4.4 of the CSA, the Permanent Investor will give notice to the Owner, the Lessee and the Agent of the amount of interest due on such interest payment date and the calculation thereof, and at least five days prior to each rental payment date under the Lease, the Owner will advise the Lessee and the Agent of the amount of rent due pursuant to Section 3.1 of the Lease on such rental payment date and the calculation thereof.

As soon as practicable after delivery to the Permanent Investor of the certificate or certificates of interest, the Agent will also deliver to such Permanent Investor a schedule of payments reflecting the dates and amounts of principal payments to be made in respect of such certificate or certificates. The Permanent Investor, simultaneously with the final payment to it of all amounts payable in respect of such certificate or certificates, will surrender such certificate or certificates to the Agent.

Pursuant to the CSA Assignment the Agent has acquired from NAC all its right, security title and interest under the CSA, except as specifically excepted by the CSA Assignment. Pursuant to the Lease Assignment, the Agent has acquired for security purposes the rights of the Trustee in, to and under the Lease, except as specifically excepted by the Lease Assignment.

The Participation Documents are hereby approved by the Permanent Investor. Except as herein provided, the Agent will not enter into or consent to any modification or supplement to, or waiver with respect to, any of the Participation Documents that could adversely affect the interest of the Permanent Investors without the prior written approval of Permanent Investors holding a majority of the aggregate CSA Indebtedness then outstanding, it being agreed

that changes in the provisions of the Lease which are not intended or necessary to satisfy the obligations of the Trustee under the CSA shall not be deemed to affect adversely the interests of the Permanent Investors. In determining whether the holders of a requisite percentage of the CSA Indebtedness have joined in any request, consent, waiver, approval or amendment under this Agreement, the Agent shall disregard any CSA Indebtedness known by it to be held by the Lessee, the Owner, or their affiliates.

The Agent will hold the moneys deposited with it pursuant hereto and any interest thereon, the rights under the CSA acquired under the CSA Assignment and the security title to the Equipment following its delivery and acceptance thereunder, and the security interest in the Lease and any payments received by it pursuant to the Lease Assignment, in trust for the benefit of the Permanent Investors. The obligations of the Agent hereunder as such titleholder and with respect to the payments to the Permanent Investors to be made by the Agent are only those expressly set forth herein.

All transactions pursuant hereto which shall occur on the Deposit Date shall be deemed for purposes of this Agreement, the CSA, the Lease and the Trust Agreement to have occurred simultaneously.



3. The Lessee represents and warrants:

(a) It is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware and is duly qualified and authorized to do business and is in good standing in every other jurisdiction where the failure to so qualify would materially and adversely affect its operations, property, assets or condition, financial or otherwise, or the transactions contemplated by the Participation Documents.

(b) It has the full corporate power and authority and legal right to carry on its business as now conducted, and is duly authorized and empowered to execute and deliver this Agreement, the Lease, the Consent and the Indemnity Agreement ("Lessee Documents") and to fulfill and comply with the terms, conditions and provisions thereof.

(c) The Lessee Documents have been duly authorized, executed and delivered by it, and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitute legal, valid and binding instruments, enforceable in accordance with their terms.

(d) There are no actions, suits or proceedings, whether or not purportedly on its behalf, pending or (to its knowledge) threatened against or affecting it or any

of its property or rights, at law or in equity or before any commission or other administrative agency which, if determined adversely to it, would materially and adversely affect its condition, financial or otherwise, or its ability to perform its obligations under the Lessee Documents, and it is not in default with respect to any order or decree of any court or government commission, agency or instrumentality, the noncompliance with which would materially and adversely affect the operations, property, assets or condition, financial or otherwise, of the Lessee or the transactions contemplated by the Participation Documents.

(e) Neither the execution and delivery of the Lessee Documents nor the consummation of the transactions therein contemplated nor the fulfillment of nor the compliance with the terms and provisions thereof will conflict with or result in a breach of any of the terms, conditions or provisions of its Certificate of Incorporation or its By-laws (in each case as amended to date) or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which it is a party or by which it or its property may be bound, or constitute (with the giving of notice or the lapse of time or both) a default thereunder, or, pursuant to the provisions thereof, result in the

creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any of its property or upon the Equipment.

(f) It is not in default, and no event has occurred which, with the giving of notice or the lapse of time, or both, would be a default, under any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, agreement or other instrument evidencing the borrowing of money to which it is a party or by which it or its property may be bound.

(g) Neither the execution and delivery by it of the Lessee Documents nor the consummation by it of the transactions therein contemplated nor the fulfillment of nor the compliance with the terms and provisions thereof will conflict with or will result in a breach of any of the terms, conditions or provisions of any law or any regulation, order, injunction or decree of any court or governmental instrumentality or arbitrator binding on it, its operations or its properties.

(h) On or before the Deposit Date, this Agreement will have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. Such filing (together with the prior filing of the CSA, the CSA Assignment, the Lease and the Lease Assignment) will

protect the Agent's and the Trustee's interests in and to the units of Equipment and the Lease and no other filing (or giving of notice) is necessary in order to protect the interests of the Agent and the Trustee under the CSA, the CSA Assignment, the Lease or the Lease Assignment or in the units of Equipment in the United States of America or in any state of the United States or the District of Columbia.

(i) It is not entering into the Lessee Documents or any other transaction contemplated thereby directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it or the Owner, NAC, the Investor, the Permanent Investor or the Trustee in its individual capacity is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA"), and it will not sublease the Equipment subject to the Lease directly or indirectly to or in connection with any arrangement by it with any person which is at the time a party in interest with respect to the employee benefit plan the assets of which were used by the Owner or the Permanent Investor in making their investments pursuant to this Agreement, all within the meaning of ERISA.

(j) The Equipment will be used in interstate commerce.

(k) No authorization, consent or approval is required from the Interstate Commerce Commission or any other governmental or public body or authority of the United States or any of the states thereof or the District of Columbia in connection with the execution by it of the Lessee Documents or the fulfillment of or the compliance with the terms, conditions and provisions thereof by it or arising from the possession or use of the Equipment.

(l) It has not directly or indirectly taken any action and will not take any action the effect of which would bring the sale of the CSA Indebtedness or the investment by the Owner within the provisions of Section 5 of the Securities Act of 1933 or the registration provisions of the securities laws of any state, or would require the qualification of the CSA or any other instrument or agreement contemplated hereby or thereby under the Trust Indenture Act of 1939. It has not and will not offer any of the CSA Indebtedness or other securities to or solicit any offer to buy any thereof or approach or negotiate with any person other than banks as defined in Section 3(a)(2) of the Securities Act of 1933, insurance companies as defined in Section 2(13) of the

Securities Act of 1933 and other similar institutions that would qualify as an accredited investor pursuant to Regulation D under the Securities Act of 1933. It will not offer any of the CSA Indebtedness or other securities to or solicit any offer to buy any thereof from any other person or approach or negotiate with any other person in respect thereof so as to bring the sale of the CSA Indebtedness or the investment by the Owner within the provisions of Section 5 of said Securities Act or the registration provisions of any such state securities law, or would require such qualification under the Trust Indenture Act of 1939.

(m) It has filed all foreign, Federal, state and local tax returns which are required to be filed and has paid or made provisions for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by it, other than taxes which are being contested in good faith and which in the aggregate do not involve material amounts.

(n) It has furnished to the Permanent Investor and the Owner its Consolidated Balance sheets as of December 31, 1982, and December 31, 1983, and the related Consolidated Statements of Income for the respective years then ended. Such consolidated financial statements are in

accordance with the books and records of the Lessee and have been prepared in accordance with generally accepted accounting principles. The financial statements present fairly the financial condition of the Lessee at such dates and the results of its operations for such periods. There has not been any materially adverse change in the operations, property, assets or condition, financial or otherwise, of the Lessee since December 31, 1983.

(o) It has not directly or indirectly authorized or employed agents, brokers, finders or otherwise (other than Tiger Financial Services, Inc. and Tiger Capital Corporation) in connection with the placement of the CSA Indebtedness or the leasing of the Equipment pursuant to the Lease.

4. The Owner represents and warrants:

(a) It is a duly organized and validly existing corporation in good standing under the laws of the State of New York.

(b) It has the full corporate power, authority and legal right to carry on its business as now conducted and is duly authorized and empowered to execute and deliver this Agreement, the Indemnity Agreement and the Trust Agreement (the "Owner Documents") and to fulfill and comply with the terms, conditions and provisions thereof.

(c) The Owner Documents have been duly authorized, executed and delivered by it and, assuming due authorization, execution and delivery thereof by the other party or parties thereto, constitute legal, valid and binding instruments of the Owner, enforceable against the Owner in accordance with their terms.

(d) It has made its investment in the Equipment (pursuant to the Trust Agreement and this Agreement) with its general assets and not directly or indirectly with the assets of or in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan), all within the meaning of ERISA. It covenants that it will not transfer its interest acquired pursuant to this Agreement (and the Trust Agreement) directly or indirectly to or in connection with any arrangement or understanding by it in any way involving any employee benefit plan with respect to which it or the Lessee, NAC, the Permanent Investor, the Investor or the Trustee in its individual capacity is at the time a party in interest, all within the meaning of ERISA.

(e) It has not directly or indirectly offered or sold any interest in the CSA Indebtedness or other securities or beneficial interests in the Equipment to any



other person. It will not offer any other securities or beneficial interest in the Equipment to or solicit any offer to buy any thereof from any other person or approach or negotiate with any other person in respect thereof so as to bring the transactions contemplated by this Agreement within the provisions of Section 5 of the Securities Act of 1933.

5. The Permanent Investor and, in the case of subparagraph (b), the Investor, represents and warrants:

(a) It is acquiring its interest in the CSA Indebtedness for its own account for investment and not with a view to or for sale in connection with the distribution of the same, nor with any present intention of distributing or selling the same, provided however, that, subject to any requirement of law, the disposition of its property shall at all times be within its control.

(b) It represents that it has full power and authority to execute and deliver this Agreement and carry out its terms.

(c) It is not acquiring its interest in the CSA Indebtedness directly or indirectly with the assets of or in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which the Lessee, the

Investor, NAC, the Owner or the Trustee in its individual capacity is a party in interest, and with which such a transaction could be a prohibited transaction, all within the meaning of ERISA.

The Permanent Investor agrees that any transfer of all or part of its interest in the CSA Indebtedness shall be upon the express condition that the transferee thereof shall be bound by and subject to the terms and conditions of this Agreement, that such transfer shall not subject this transaction to the registration provisions of the Securities Act of 1933 or the securities laws of any state, that its transferee will make the representations set forth in Section 5(c) hereof and that its transferee will approve the Participation Documents. Prior to any such transfer, such Permanent Investor shall notify the Agent, the Trustee and the Lessee in writing thereof and the Agent shall cause to be prepared and delivered to such Permanent Investor an appropriate agreement, to be entered into among such Permanent Investor, such transferee and the Agent, evidencing such transfer upon the terms hereof.

6. The Trustee represents and warrants:

(a) It is a duly organized and validly existing national banking association in good standing under the laws of the United States.

(b) It has the full corporate power, authority and legal right to carry on its business as now conducted and is duly authorized and empowered to execute and deliver the Trust Agreement and, acting pursuant thereto, this Agreement, the CSA, the Lease, the Lease Assignment and the Acknowledgment of Notice of Assignment (the "Trustee Documents"), and to fulfill and comply with the terms, conditions and provisions thereof.

(c) The Trustee Documents have been duly authorized, executed and delivered by it and, assuming due authorization, execution and delivery thereof by the other party or parties thereto, constitute legal, valid and binding instruments, enforceable in accordance with their terms.

(d) No authorization, consent or approval from any governmental or public regulatory body or authority of the United States or of any of the states thereof or the District of Columbia is necessary for the execution, delivery and performance by it of the Trustee Documents.

(e) It represents that it is not entering into the Trustee Documents or any other transaction contemplated thereby directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan)

with respect to which it in its individual capacity or, to the best of its knowledge, the Lessee, the Owner, NAC, the Investor or the Permanent Investor is a party in interest, all within the meaning of ERISA.

7. The obligation of the Permanent Investor to make payment to the Agent pursuant to Paragraph 2 hereof and the obligation of the Agent to make payment to the Investor forthwith on the Deposit Date pursuant to Paragraph 2 hereof shall be subject to the receipt by the Agent and the Owner on or prior to the Deposit Date of the following documents, in form and substance satisfactory to the Agent, King & Spalding, special counsel to the Permanent Investor, the Owner and Haight, Gardner, Poor & Havens, special counsel to the Owner, and dated not more than 10 days prior to the Deposit Date:

(a) An opinion of Cravath, Swaine & Moore, special counsel for the Permanent Investor, to the effect that:

(i) this Agreement, assuming due authorization, execution and delivery by each of the parties, constitutes a legal, valid, binding and enforceable instrument;

(ii) the CSA and the Lease have each been duly authorized, executed and delivered and each is a legal, valid and binding instrument, enforceable in accordance with its terms;

(iii) the CSA Assignment, the Lease Assignment and the Consent have each been duly authorized, executed and delivered and each is a legal, valid, binding and enforceable instrument;

(iv) the Agent is vested with all right, title and interest of the Trustee purported to be assigned to it by the Lease Assignment; the Agent is vested with all right, title and interest of NAC purported to be assigned to it by the CSA Assignment and the Agent has a valid security interest therein, and the Equipment, at the time of delivery thereof to the Lessee under the CSA, was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA);

(v) this Agreement, the CSA, the CSA Assignment, the Lease and the Lease Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and no other filing or recordation is necessary for the protection of the rights of the Agent therein or in the Equipment in any state of the United States or the District of Columbia;

(vi) no authorization or approval from any governmental or public body or authority of the

United States or of any of the states thereof or of the District of Columbia is, to the knowledge of said special counsel, necessary for the execution, delivery and performance of the Participation Documents;

(vii) under the circumstances contemplated by this Agreement it is not necessary to register the CSA, the CSA Assignment or any certificate of interest delivered pursuant hereto under the Securities Act of 1933 or the securities laws of any state or to qualify the CSA or any other instrument or agreement contemplated hereby or thereby under the Trust Indenture Act of 1939;

(viii) the legal opinions referred to in subparagraphs (b), (c) and (d) of this Paragraph 7 are satisfactory in form and scope to said special counsel and that in its opinion the Permanent Investor and said special counsel are justified in relying thereon;

and as to such other matters incident to the transactions contemplated by this Agreement as the Permanent Investors may reasonably request.

(b) An opinion of counsel for the Owner to the effect set forth in subparagraphs (a), (b) and (c) of

Paragraph 4 and in clause (vi) of subparagraph (a) of this Paragraph 7, insofar as such matters relate to the Owner.

(c) An opinion of counsel for the Lessee to the effect set forth in subparagraphs (a), (b), (c), (d), (e), (g), (h) and (k) of Paragraph 3 hereof (which in the case of subparagraphs (d), (e), (g), (h) [only to the issue of the actual filing of this Agreement] and (k) may be to the best knowledge of such counsel after due inquiry) and to the further effect that no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects any property or interest therein of the Lessee now attaches or hereafter will attach to the Equipment or in any manner adversely affects or will adversely affect the right, title and interest of the Trustee, the Owner or the Agent therein.

(d) An opinion of counsel for the Trustee to the effect set forth in subparagraphs (a), (b), (c) and (d) of Paragraph 6 hereof (which in the case of subparagraph (d) may be to the best knowledge of such counsel after due inquiry).

(e) A certificate of an officer of the Lessee to the effect that (a) the representations and warranties of the Lessee contained in this Agreement are true on and as of the Deposit Date, with the same effect as though made

on such Date, (b) the Lessee is not currently in default under the Lessee Documents and no condition exists nor has any event occurred which with the giving of notice or the lapse of time or both would constitute such a default and (c) there has been no materially adverse change in the Lessee's operation, property, assets or condition, financial or otherwise, since December 31, 1983.

(f) A certificate of an officer or authorized attorney-in-fact of the Owner to the effect that (a) the Owner is not in default under the Owner Documents and no condition exists nor has any event occurred which with the giving of notice or the lapse of time or both would constitute such a default, (b) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the United States Internal Revenue Code of 1954) or, to the best of his knowledge and belief, other tax liens have been filed and are currently in effect against the Owner which could adversely affect the interests of the Agent in such Equipment or the Lease, (c) except for the CSA and the CSA Assignment, no mortgage, deed of trust or other lien of any nature whatsoever now in existence which now covers or affects or which may hereafter cover or affect any property or interest therein of the Owner now attaches or hereafter will attach to the Equipment or in any manner



adversely affects or will adversely affect the right, title and interest of the Agent therein and (d) the Owner's representations and warranties contained in this Agreement are true on and as of the Deposit Date with the same effect as if made on such date.

(g) A certificate or certificates of insurance in accordance with § 7.6 of the Lease.

(h) Executed counterparts of this Agreement.

(i) Notification (oral or written) that the Agent has received from the Lessee in immediately available funds an amount equal to \$20,908.06 as a payment under the Lease.

(j) Such other documents as the Agent, the Permanent Investor or its special counsel, may reasonably request.

In giving the opinions specified in subparagraphs (a), (b), (c) and (d) of this Paragraph 7, counsel may qualify its opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and to the further effect that the availability of the remedy of specific performance is within the discretion of the enforcing court. In giving the opinion specified in subparagraph (a) of this Paragraph 7, counsel may rely (a) on the opinion of counsel for NAC as to the authorization, execution and delivery by NAC of the Owner Documents, (b) on

NAC's warranties of title set forth in Section 14.5 of the CSA, and (c) on the opinion of counsel for the Owner, the Lessee or the Trustee as to any other matter governed by the law of any jurisdiction other than the State of New York or the United States. In giving the opinion specified in subparagraph (b) of this Paragraph 7, counsel may rely on the opinion of counsel for the Trustee as to all matters governed by the law of the State of Illinois.

The Deposit Date closing hereunder shall take place at the offices of King & Spalding, in Atlanta, Georgia.

8. The Agent will accept payments made to it by or for the account of the Trustee pursuant to the CSA and the CSA Assignment, on account of the principal of or accrued interest on the CSA Indebtedness, and will apply such payments promptly, first to the pro rata payment of interest payable on the CSA Indebtedness and second to the pro rata payment of the installments of the CSA Indebtedness in the order of maturity thereof until the same shall have been paid in full.

The Agent will accept all sums paid to it pursuant to Article 7 of the CSA with respect to Casualty Occurrences or a Termination (as defined in § 7 of the Lease) and will apply such sums to the pro rata prepayment of each of the installments of the CSA Indebtedness remaining unpaid (in proportion to the principal amount of CSA Indebtedness

represented by each such installment), without premium, together with interest accrued and unpaid on such prepaid CSA Indebtedness and will distribute such prepayment and interest thereon to the Permanent Investors. The Agent will furnish to the Permanent Investors a revised schedule of payments showing the reduction of their respective interests in the installments of the CSA Indebtedness remaining unpaid and the interest payable thereon.

Notwithstanding anything to the contrary contained herein, if a Declaration of Default (as defined in the CSA) is in effect, all moneys held by or coming into the possession of the Agent under the Participation Documents applicable to the payment or prepayment of CSA Indebtedness or interest thereon (including without limitation the net proceeds of any repossession and sale or lease of any unit of Equipment after deduction of all expenses, including reasonable counsel fees, incurred by the Agent in connection with such repossession and sale or lease or otherwise hereunder which shall not have been previously reimbursed to the Agent by the Trustee pursuant to the CSA) immediately shall be distributed by the Agent to the Permanent Investors pro rata and the Agent shall otherwise take such action as is referred to in this Paragraph 8.

All payments to be made by the Agent hereunder shall (subject to timely receipt by the Agent of available funds) be

made by bank wire transfer of Federal funds for credit to the account of the Permanent Investor at Trust Company Bank, Atlanta, Georgia, Account Number 8800088604, or as may be specified to the Agent in writing.

So long as, to the actual knowledge of the Agent, no default under Article 16 of the CSA shall have occurred and be continuing, the Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights or taking or refraining from taking any action which may be vested in it or which it may be entitled to assert or take, hereunder or under the CSA, the CSA Assignment, the Lease or the Lease Assignment except as otherwise specifically provided herein. The Agent shall not incur any liability hereunder or otherwise in acting upon any notice, certificate or other paper or instrument believed by it in good faith to be genuine and signed by the proper party or parties, or with respect to anything which it may do or refrain from doing in the exercise of its best judgment, or which may seem to it to be necessary or desirable in the premises, except liability resulting from its own misconduct or negligence. In case the Agent shall have actual knowledge of the occurrence of a Default howsoever arising, the Agent shall give prompt telephonic notice thereof, confirmed in writing, to the Trustee, the Owner, the Lessee, the Permanent Investors and NAC. The Agent shall take such

action (including enforcement actions) and assert such rights under the CSA and the Lease as shall be agreed upon by holders of a majority in principal amount of the CSA Indebtedness then outstanding; provided, however, that, notwithstanding the foregoing, the Agent shall not take any such action which would reduce the amount of principal or the rate of interest owing to a Permanent Investor pursuant hereto, or which would extend the time of payment of such principal or interest without the written consent of such Permanent Investor; and provided further, however, that the Agent will take all action required to be taken by it under the Participation Documents. In case the Agent is required to take action hereunder, it shall be indemnified against any liability or expense, including reasonable counsel fees, in connection with taking such action or asserting such rights by the Permanent Investors in proportion to their respective interests in the aggregate CSA Indebtedness then outstanding.

The Agent may consult with legal counsel of its own choice and shall not be under any liability for any action taken or not taken in good faith by it in accordance with the opinion of such counsel.

The Agent will promptly mail or deliver to each Permanent Investor one copy of all notices, statements, documents or schedules received by it from the Trustee or the Lessee pursuant to the Participation Documents.

All notices, instructions, directions and approvals to be delivered hereunder to the Agent by any Permanent Investor shall be in writing and signed by an officer, manager or assistant manager of such Permanent Investor. The Agent may rely on any notice, instruction, direction or approval so signed.

The Agent represents and warrants that it has all necessary corporate authority to enter into this Agreement and to execute and deliver the certificate or certificates of interest. The Agent does not make any representation or assume any responsibility with respect to the validity of the Participation Documents or any certificate of interest (except with respect to its own execution thereof) or any of the matters covered thereby or the value of or the title to the Equipment.

In the event of any dispute with respect to the delivery or ownership or right to possession of funds or documents at any time held by the Agent hereunder or with respect to title to any unit of Equipment, the Agent is hereby authorized and directed to retain, without liability to anyone, all or any of such funds or documents of title until such dispute shall have been settled either by agreement of the Permanent Investors or by final order, decree or judgment of a court of competent jurisdiction. The Agent, if requested so to

do by Permanent Investors holding more than 50% of the then outstanding CSA Indebtedness, shall invest and reinvest such funds as directed by such holders.

The Agent shall be entitled to terminate its duties and responsibilities hereunder by giving written notice to each Permanent Investor that it desires to terminate such duties and responsibilities on a date (at least 30 days subsequent to the giving of such notice) stated in said notice. If, prior to the date stated in said notice, Permanent Investors holding interests totaling more than 50% of the CSA Indebtedness then outstanding shall have requested in writing that the Agent assign to a person or institution designated by such holders all right, title and interest of the Agent under the CSA and the CSA Assignment and in and to the Equipment and the Lease and the Lease Assignment, the Agent shall comply with such request. In the event that such request is not received by the Agent on or before the date designated in said notice, the Agent shall be entitled to appoint a successor to act hereunder (which successor shall be a bank or trust company located in the Borough of Manhattan, City and State of New York, or in Chicago, Illinois, or in Atlanta, Georgia, having capital and surplus aggregating at least \$100,000,000) and to assign to such successor, subject to the provisions of this Agreement, all such right, title and interest of the Agent. Upon such

assignment by the Agent to a person or institution designated by such Permanent Investors or, in the absence of such designation, to a successor appointed by the Agent, the Agent shall thereupon be relieved of all duties and responsibilities hereunder.

9. The Lessee will deliver or cause to be delivered to the Agent, the Owner, the Trustee and each Permanent Investor (a) as soon as available and in any event within 90 days after the end of each of its fiscal years, a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of the Lessee stating that he has reviewed the activities of the Lessee during such year and that to the best of his knowledge the Lessee during such year has kept, observed, performed and fulfilled each and every covenant, obligation and condition contained in the Lessee Documents or, if an Event of Default (as defined in the Lease) shall exist or have existed or if an event has occurred and is continuing which with the giving of notice or the lapse of time or both would constitute an Event of Default, specifying such Event of Default and all such events and the nature and status thereof and (b) (i) as soon as available, and in any event within 60 days after the end of the first, second and third quarterly accounting periods in each fiscal year of the Lessee, copies of the Unaudited Consolidated Balance Sheet of the



Lessee as of the end of such accounting period and copies of the related Unaudited Consolidated Statements of Income of the Lessee for the portion of its fiscal year then ended, all in reasonable detail, accompanied by a cover letter from the Treasurer, (ii) as soon as available, and in any event within 90 days after the end of each of its fiscal years, copies of the Consolidated Balance Sheet of the Lessee as of the end of such fiscal year and copies of the related Consolidated Statements of Income and Changes in Financial Position for such fiscal year, all in reasonable detail, audited by independent certified public accountants of recognized national standing and stating in comparative form the consolidated figures as of the end of the previous fiscal year, (iii) as soon as available, a copy of each Current Report on Form 8-K (or its successor), Quarterly Report on Form 10-Q (or its successor) and Annual Report on Form 10-K (or its successor), if any, filed with the Securities and Exchange Commission by the Lessee, (iv) as soon as available, a copy of each prospectus, if any, filed by the Lessee with the Securities and Exchange Commission pursuant to Rule 424(b) (or its successor) of the Commission under the Securities Act of 1933, as amended, and (v) from time to time such other information as any Permanent Investor or the Owner may reasonably request.

The Lessee will permit representatives of the Trustee, the Agent, any Permanent Investor and the Owner, at such party's risk and expense, with respect to matters reasonably related to the transactions contemplated by this Agreement or to the financial condition of the Lessee, and when accompanied by a representative of the Lessee, to visit and inspect any of the properties of the Lessee, to examine its corporate books and financial records (except to the extent such examination would result in the loss by the Lessee of a legally recognized privilege against compulsory disclosure) and to discuss its affairs, finances and accounts with its officers and independent public accountants all at such reasonable times and as often as may be reasonably requested.

10. The Lessee shall pay, or to cause to be paid in connection with this Amended and Restated Participation Agreement and Amendment, (i) the reasonable fees and disbursements of King & Spalding as special counsel for the Permanent Investors and the cost of producing and reproducing the Participation Agreement, this amendment and restatement thereof, the Lease, the Trust Agreement, the CSA, the CSA Assignment, the Lease Assignment, the Consent and the Indemnity Agreement, (ii) the reasonable fees and disbursements of Cravath, Swaine & Moore in connection with the opinion delivered, pursuant to Paragraph 7(a) hereof, (iii) the

reasonable fees and disbursements of Haight, Gardner, Poor & Havens, special counsel to the Owner, and Sullivan & Cromwell, special tax counsel to the Owners, (iv) the reasonable routine and ordinary fees, costs and disbursements of the Agent and the Trustee (including the cost of delivery for the certificates of interest and counsel fees pursuant to this Agreement), (v) the costs of filing, recording and giving public notice or publication as to such filing and recording of this Agreement, the Lease, the CSA, the CSA Assignment and the Lease Assignment and any amendments or supplements thereto with the Interstate Commerce Commission and (vi) any other reasonable expenses incurred by the parties hereto in connection herewith. The Permanent Investor, the Investor, the Trustee, the Owner and the Agent shall have no liability for any of the aforesaid fees, costs, disbursements and expenses or for any other expenses. The Lessee agrees to pay all expenses, costs and fees in connection with the preparation, execution, delivery, recording and filing of, and the giving of public notice or publication with respect to any amendments, supplements or waivers with respect to the Participation Documents and the transactions contemplated thereby entered into after the Deposit Date or in connection with any permanent financing (provided, however, that if the Owner has requested any such amendment, supplement or waiver, the Owner shall reimburse the Lessee for such expenses, costs and fees).

11. All documents and notices deliverable to the Lessee hereunder shall be delivered to it at P.O. Drawer D, Williamsburg, Virginia 23187, attention of Treasurer.

All documents, notices and funds deliverable hereunder to the Agent shall be delivered to it at its address at 135 South LaSalle Street, Chicago, Illinois 60690, attention of Corporate Trust Division.

All documents and notices deliverable to the Owner shall be delivered to it at 260 Long Ridge Road, Stamford, Connecticut 06904, Attention of Manager-Operations, Transportation Financing Department, with a separate copy to the attention of each of Manager-Rail Component and Contracts Administration-Rail Component.

All documents, notices and funds deliverable hereunder to the Trustee shall be delivered to it at its address at 120 South LaSalle Street, Chicago, Illinois 60603, attention of Corporate Trust Department.

All documents, notices and funds deliverable to the Investor shall be delivered to it at 23 Wall Street, New York, New York, Attention: Mr. Frank Teague.

All documents, notices and funds deliverable to the Permanent Investor shall be delivered to it at its address at Suite 1800, First Atlanta Tower, 2 Peachtree Street, N.W., Atlanta, Georgia 30383-3501.

12. In the event that the Lessee or the Trustee shall have knowledge of an Event of Default under the Lease or an event of default under the CSA, such party shall give prompt telephonic notice (confirmed in writing) thereof to the other and to the Agent, the Permanent Investor and the Owner. Knowledge shall mean actual knowledge of an officer or responsible department head of the Lessee or actual knowledge of an officer or an employee in the Corporate Trust Department of the Trustee.

13. Each and all of the representations, warranties, covenants and agreements herein made (except for the representations made by the Trustee under Paragraph 6 hereof for which it shall be liable in its individual capacity) on the part of the financial institution acting as Trustee hereunder are made and intended not as personal representations, warranties, covenants and agreements by said institution or for the purpose or with the intention of binding said institution personally but are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) and (except as aforesaid) this Agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be

asserted or enforceable against said institution or the Owner on account of any representation, warranty, covenant or agreement herein of the Trustee (except as aforesaid or in the case of gross negligence or willful misconduct of the Trustee), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee, the Agent, the Investor and the Permanent Investors or any person claiming by, through or under any of them; provided, however, that the Lessee, the Agent, the Investor and the Permanent Investors or any person claiming by, through or under any of them making claim hereunder may look to said Trust Estate for satisfaction of the same. Notwithstanding the foregoing, the Owner agrees with the other parties hereto to discharge all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Owner described in Section 13.3 of the CSA (unless the validity thereof shall be contested as provided in said Section 13.3).

14. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The terms of this Agreement and the rights and obligations of the parties hereto hereunder may be changed only by an agreement in writing, signed by the party against whom enforcement of such charge is sought.

15. The Owner agrees, for the benefit of the Permanent Investors, to take all necessary action, including, without limitation, payment of funds, to enable the Trustee to discharge pursuant to the proviso in Section 13.3 of the CSA the claims, liens, charges or security interests referred to in said paragraph claimed by any party from, through or under the Owner (unless the validity thereof shall be contested as provided in said Section 13.3).

16. The Trustee and the Agent, as assignee of NAC, agree that, subject to payment by the Permanent Investor of the amount to be paid by it pursuant to Paragraph 2 hereof, the CSA shall be amended as follows:

- (a) Section 4.4 thereof is deleted and the following is substituted therefor:

4.4 CSA Indebtedness; Payment Dates; Interest.

"(a) The installments of the CSA Indebtedness shall be payable quarterly on January 1, April 1, July 1 and October 1 in each year, commencing October 1, 1984, until the last such installment has been paid (each such date being herein called a "Payment Date"). If any Payment Date is not a Banking Day, the payment shall be payable on the next succeeding Banking Day. The unpaid balance of the CSA

Indebtedness shall bear interest from and including the Deposit Date as defined in the Participation Agreement at a rate of interest per annum for each Interest Period equal to the Floating Rate. For purposes hereof, (i) "Interest Period" shall mean (I) from the date hereof through June 30, 1989, a period of time that commences on the Deposit Date or on the last day of the immediately preceding Interest Period and ends (A) on the date one, two or three months thereafter as the Borrower may elect, in the case of a LIBOR Option, an Adjusted C/D Rate Option or a Federal Funds Rate Option or (B) on the date the Lessee gives notice to Barclays Bank International Limited (the "Permanent Investor") in the case of a Prime Rate Option, provided that any Interest Period that would otherwise end on a day that is not a Banking Day shall be extended to the next succeeding Banking Day and (II) thereafter a period of time that commences on the last day of the immediately preceding Interest Period and ends 6 months thereafter; (ii) "Floating Rate" shall mean (A) from the date hereof through June 30, 1985, (w) the Prime Rate or (x) the LIBOR Rate plus one-fourth of one percent (1/4%) or (y) the Adjusted C/D Rate plus



one-fourth of one percent ( $1/4\%$ ) or (z) the Federal Funds Rate plus the Federal Funds Increment plus three-eighths of one percent ( $3/8\%$ ); (B) from July 1, 1985 through June 30, 1987, (w) the Prime Rate or (x) the LIBOR Rate plus three-eighths of one percent ( $3/8\%$ ) or (y) the Adjusted C/D Rate plus three-eighths of one percent ( $3/8\%$ ) or (z) the Federal Funds Rate plus the Federal Funds Increment plus one-half of one percent ( $1/2\%$ ); (C) from July 1, 1987 through June 30, 1989, (w) the Prime Rate plus one-eighth of one percent ( $1/8\%$ ) or (x) the LIBOR Rate plus one-half of one percent ( $1/2\%$ ) or (y) the Adjusted C/D Rate plus one-half of one percent ( $1/2\%$ ) or (z) the Federal Funds Rate plus the Federal Funds Increment plus five-eighths of one percent ( $5/8\%$ ); in each case (A, B and C) as the Lessee shall select by giving notice to the Permanent Investor, in the case of a LIBOR Option, at least two Banking Days prior to the beginning of each Interest Period, and otherwise prior to the beginning of each Interest Period, at which time the Lessee shall select the Floating Rate for a one, two or three months period, or if the Lessee shall fail to so select, the same rate option and time period in effect for the preceding Interest

Period; (D) thereafter the LIBOR Rate plus five percent (5%); (iii) "Prime Rate" shall mean the rate of interest announced by the Permanent Investor from time to time as its Prime Rate, with any change in the rate of interest resulting from a change in the Prime Rate being effective as of the opening of business on the effective date of a change in the Prime Rate announced by the Permanent Investor; (iv) "LIBOR Rate" applicable to any Interest Period shall mean the rate per annum quoted by the Permanent Investor as its one-month, two-month, three-month or six-month LIBOR Rate, as the case may be, for the amount of CSA Indebtedness for the succeeding Interest Period; (v) "Adjusted C/D Rate" applicable to any Interest Period shall mean the rate per annum quoted by the Permanent Investor as its one-month, two-month or three-month Adjusted C/D Rate, as the case may be, for the amount of CSA Indebtedness for the succeeding Interest Period; (vi) "Federal Funds Rate" applicable to any Interest Period shall mean the rate per annum quoted by the Permanent Investor as its Federal Funds Rate, provided that the Federal Funds Rate shall not be higher than 10 basis points over the average federal funds overnight rate as quoted by

the Federal Reserve Bank of New York, for the business day to which the Federal Funds Rate applies; (vii) "Federal Funds Increment" shall mean the per annum interest rate derived from the following table:

<u>Federal Funds Rate</u>	<u>Increment</u>		
	<u>One Month</u>	<u>Two Month</u>	<u>Three Month</u>
0-5%	.01%	.02%	.03%
5.00001-6	.02	.03	.05
6.00001-7	.02	.04	.06
7.00001-8	.03	.05	.08
8.00001-9	.03	.07	.10
9.00001-10	.04	.08	.13
10.00001-11	.05	.10	.16
11.00001-12	.06	.12	.19
12.00001-13	.07	.14	.22
13.00001-14	.08	.17	.25
14.00001-15	.10	.19	.29
15.00001-16	.11	.22	.33
16.00001-17	.12	.24	.37
17.00001-18	.14	.27	.42
18.00001-19	.15	.31	.47
19.00001-20	.17	.34	.52
20.00001-21	.19	.37	.57
21.00001-22	.21	.41	.63
22.00001 and above	To be negotiated		

(viii) "LIBOR Option" shall mean any selection hereunder by the Lessee of a Floating Rate based on LIBOR; (ix) "Adjusted C/D Rate Option" shall mean any selection hereunder by the Lessee of a Floating Rate based on the Adjusted C/D Rate; (x) "Federal Funds Rate Option" shall mean any selection hereunder by the Lessee of a Floating Rate based on the Federal

Funds Rate; (xi) "Prime Rate Option" shall mean any selection hereunder by the Lessee of a Floating Rate based on the Prime Rate; (xii) "Banking Day" shall mean any day on which commercial banks are open for domestic and international business (including dealings in dollar deposits) in London and New York City and Chicago, Illinois. Where the Prime Rate Option or Federal Funds Rate Option is selected, to permit calculation of the Floating Rate prior to the end of any Interest Period, it is agreed that the calculation will be made on the assumption that the Prime Rate or the Federal Funds Rate does not change for the last 10 days of the Interest Period. The effect of actual changes in the Prime Rate or the Federal Funds Rate occurring in the last 10 days of the Interest Period will be reflected as an addition to or subtraction from, as the case may be, the interest payable on the succeeding Payment Date. The amount of principal of the CSA Indebtedness payable on each Payment Date shall be calculated to be substantially in proportion to the amount and allocation of principal on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal shall

completely amortize the CSA Indebtedness at maturity on January 1, 2007.

Interest on the unpaid balance of the CSA Indebtedness shall be payable in arrears to the extent accrued at the end of each Interest Period, provided, however that when the end of any Interest Period is not a Payment Date, such payment shall be made on the next succeeding Payment Date and such interest due shall bear interest at the Floating Rate for the subsequent Interest Period(s) until the next succeeding Payment Date.

(b) If, after the date of this Agreement, the adoption of any applicable law, rule or regulation, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof or compliance by any Permanent Investor with any request or directive (whether or not having the force of law) of any such authority shall make it unlawful or impossible for such Permanent Investor to make, maintain or fund its Investment on the basis of the LIBOR Rate or the Adjusted C/D Rate, then such Investor forthwith shall

so notify the Trustee and the Lessee. Upon receipt of such notice and until such Permanent Investor notifies the Trustee and the Lessee that such notice is no longer effective, the Floating Rate shall be the applicable Prime Rate Option or Federal Funds Rate Option, as the Lessee shall select by giving the notice described in subsection (a) of this Section 4.4, commencing on either (a) the last day of the then current Interest Period if such Permanent Investor may lawfully continue to fund and maintain its Investment on such basis to such day or (b) immediately if such Permanent Investor may not lawfully continue to fund and maintain its Investment on such basis to such day.

(c) If (A) the adoption by the Board of Governors of the Federal Reserve System on August 15, 1980, of revisions to Regulation D or (B) after the date hereof, the adoption of, or any change in, any applicable law, rule or regulation or the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof or compliance by any Permanent Investor with any request or directive of any such

authority, central bank or comparable agency (whether or not having the force of law):

(i) shall subject such Permanent Investor to any tax, duty or other charge with respect to its Investment if the Floating Rate is to be determined on the basis of the LIBOR Rate or the Adjusted C/D Rate or shall change the basis of taxation of payments to such Permanent Investor of the principal of or interest on its Investment or in respect of its Investment (except for changes in the rate of tax on the overall net income of such Investor imposed by the jurisdiction in which its principal executive office is located); or

(ii) shall impose, modify or deem applicable any reserve (including, without limitation, any imposed by the Board of Governors of the Federal Reserve System), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, such Permanent Investor in the London interbank market or the market for certificates of deposit in the United States or shall impose on such Permanent Investor or the London interbank

market or the market for certificates of deposit in the United States any other condition affecting its obligation to make or maintain its Investment in the London interbank market or the market for certificates of deposit in the United States;

and the result of any of the foregoing is to increase the cost to such Permanent Investor of making or maintaining its Investment or to reduce the amount of any sum received or receivable by it in respect thereof by an amount deemed by such Permanent Investor to be material, then within fifteen (15) days after demand by such Permanent Investor to the Trustee and the Lessee, the Trustee will pay to such Permanent Investor such additional amount or amounts as will compensate such Permanent Investor for such increased cost or reduction. Such Permanent Investor will promptly notify the Trustee and the Lessee of any event of which it has knowledge, occurring after the date hereof, which will entitle it to compensation pursuant to this paragraph (c). A certificate of any Permanent Investor setting forth the basis for determining such additional amount or amounts necessary to compensate such Permanent



Investor shall be conclusive in the absence of manifest error. Upon receipt by the Lessee of a demand from any Permanent Investor under this paragraph (c), the Lessee may elect, upon three Banking Days' notice to such Permanent Investor, to have the Floating Rate be equal to the applicable Prime Rate Option or Federal Funds Rate Option; provided, that the Trustee shall reimburse such Permanent Investor on demand for any loss incurred by it as a result of such election, including, without limitation, any loss incurred in liquidating or employing deposits from third parties for the period after such election takes effect to the end of the applicable Interest Period."

(b) Section 4.5 thereof is deleted and the following is substituted therefor:

"4.5. Calculation of Interest. Interest under this Agreement shall be calculated on the basis of a 360-day year for the actual number of days elapsed in the Interest Period."

(c) Section 4.6 is deleted and the following is substituted therefor:

"4.6. Penalty Interest. The Trustee will pay interest at the rate of 2% per annum above the Prime

Rate ("Penalty Rate"), upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding."

17. The parties to the Lease agree that, subject to the payment by the Permanent Investor of the amounts to be paid by it pursuant to Paragraph 2 hereof, the Lease shall be amended as follows:

(a) In § 3.1, the reference to Section 4.4(d) of the CSA is changed to Section 4.4(c) of the CSA.

(b) The second sentence of § 3.2 is deleted and the following is substituted therefor: "The term "business day" as used herein means any day on which commercial banks are open for domestic and international business (including dealings in dollar deposits) in London and New York City and Chicago, Illinois."

(c) In § 19, the words "1% per annum above the Floating Rate" are deleted and the following is substituted therefor: "2% per annum above the Prime Rate"; and the words "of twelve 30-day months" are deleted and the following is substituted therefor: "for the actual number of days elapsed."

The parties to the Lease further acknowledge that all references in the Lease to the Floating Rate (as defined in Section 4.4 of the CSA) are to the Floating Rate as defined in Section 4.4 of the CSA, as amended hereby.

18. Except as amended hereby, the CSA and the Lease shall remain in full force and effect.

19. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by all the parties so long as each party hereto shall have executed one counterpart hereof, which shall be effective upon delivery thereof to King & Spalding at its offices in Atlanta, Georgia.

20. The parties hereto agree that, subject to the consent of the Owner, which consent will not be unreasonably withheld, the Lessee may provide other investors which may, on any Payment Date after June 30, 1987, acquire all the Permanent Investor's interest in the CSA Indebtedness. In connection with any such acquisition, this Agreement, the Lease and the CSA will be amended to set forth the terms to be agreed upon by such other investors and the parties hereto. Such amendments may include, among other things, changes in the interest rate and the schedule of payments applicable to the CSA Indebtedness as well as corresponding changes in the rentals and Casualty and Termination Values.

The Permanent Investor agrees, notwithstanding anything to the contrary in the CSA or the certificate of interest, to accept prepayment of its interest in the CSA Indebtedness on any Payment Date after June 30, 1987, with interest paid to the date of prepayment, without premium, if and when requested to do so in a written notice given by the Lessee to all parties hereto, not less than 60 days prior to such date of prepayment, in order to accomodate such subsequent financing. In that connection, the Permanent Investor agrees to provide whatever releases and assurances may be reasonably requested by the Lessee to accomodate such permanent financing. The Lessee agrees to pay all costs, fees and expenses in connection with any such acquisition of the Permanent Investor's interest in the CSA Indebtedness.

21. Lessee hereby agrees to indemnify the Owner on an after-tax basis for any adverse tax consequences, including without limitation, the loss of any tax benefits contemplated by Section 1 of the Indemnity Agreement, which the Owner may suffer as a result of the execution, delivery or consummation of this Agreement and the amendments contained herein, or of any future amendments made pursuant to Section 20 hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized signatories as of the date first above written.

BADISCHE CORPORATION,

Sworn to and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 1984.

By: \_\_\_\_\_  
Treasurer

\_\_\_\_\_  
Notary Public

LA SALLE NATIONAL BANK,

Sworn to and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 1984.

By: \_\_\_\_\_  
Vice President

\_\_\_\_\_  
Notary Public

GENERAL ELECTRIC CREDIT  
CORPORATION,

Sworn to and subscribed  
before me this 6th day  
of July, 1984.

By: *Richard L. Hayes*  
~~Attorney-in-fact~~  
MANAGER - RAIL FINANCING

*Joan A. Sayer*  
Notary Public

JOAN A. SAYER  
NOTARY PUBLIC  
MY COMMISSION EXPIRES MARCH 31, 1986

EXCHANGE NATIONAL BANK OF  
CHICAGO, not in its individual  
capacity but solely as Trustee  
under the aforesaid Trust  
Agreement,

Sworn to and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 1984.

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_  
First Vice President

MORGAN GUARANTY TRUST COMPANY  
OF NEW YORK,

Sworn to and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 1984.

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_  
Asst. Vice President

BARCLAYS BANK INTERNATIONAL  
LIMITED, Atlanta Agency

Sworn to and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 1984.

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_  
First Vice President  
and Manager

Sworn to and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 1984.

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_  
Vice President

## APPENDIX I

Conditional Sale Agreement dated as of June 1, 1981,  
as amended (Secured by Lease Obligations of  
BADISCHE CORPORATION)  
Floating Interest Rate

### CERTIFICATE OF INTEREST

LA SALLE NATIONAL BANK, as agent ("Agent"), hereby acknowledges receipt from BARCLAYS BANK INTERNATIONAL LIMITED ("Investor") of \$8,271,319.65, such sum having been paid by the Investor under and pursuant to the terms and conditions of an Amended and Restated Participation Agreement and Agreement dated as of July 1, 1984, ("Participation Agreement"), among BADISCHE CORPORATION ("Lessee"), the Agent, GENERAL ELECTRIC CREDIT CORPORATION ("Owner"), EXCHANGE NATIONAL BANK OF CHICAGO, as trustee ("Trustee"), MORGAN GUARANTY TRUST COMPANY OF NEW YORK and the Investor. By reason of such payment the Investor has an interest in a principal amount equal to such sum in and to (i) the Conditional Sale Agreement dated as of June 1, 1981, as amended ("CSA"), between NORTH AMERICAN CAR CORPORATION ("NAC") and the Trustee, the railroad equipment covered by the CSA and the CSA Indebtedness (as defined in the CSA), (ii) the Agreement and Assignment dated as of June 1, 1981, between NAC and the Agent, (iii) the right, security title and interest of the Agent in and to the Lease of Railroad Equipment dated as of June 1, 1981, as amended ("Lease") between the Lessee and the Trustee, (iv) the Assignment of

Lease and Agreement dated as of June 1, 1981, between the Trustee and the Agent, to which the Lessee acknowledged and consented pursuant to the Consent and Agreement attached thereto and (v) all cash and other property from time to time held by the Agent under the Participation Agreement, except to the extent that installments of such principal amount shall have been paid.

Under the terms of the CSA, subject to the rights of prepayment contained therein in the event of a Casualty Occurrence and/or a Termination (as defined in the Lease), and the Participation Agreement (i) such principal amount is payable in 90 consecutive quarterly installments on each January 1, April 1, July 1 and October 1, commencing on October 1, 1984, until the last such installment has been paid, (ii) such principal amount bears interest from the date hereof on the unpaid portion thereof from time to time outstanding, payable on each January 1, April 1, July 1 and October 1, commencing October 1, 1984, until such principal amount shall have been paid in full, at the Floating Rate (as defined in Section 4.4 of the CSA) and (iii) all such principal and interest remaining unpaid after the same shall have become due and payable bears interest at the rate of 2% per annum above the Prime Rate (as defined in Section 4.4 of the CSA). All such interest shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The Agent has furnished or promptly will furnish to the Investor a schedule



of payments reflecting the dates and amounts of principal payments to be made in respect of the interests of the Investor. All payments received by the Agent in accordance with the terms of the Participation Agreement and the CSA shall be disbursed by the Agent in accordance with the terms and conditions of the Participation Agreement.

The interests of the Investor referred to in this Certificate of Interest may not be transferred except in the manner provided in the Participation Agreement and subject to the terms, conditions and limitations provided therein.

Dated:                   , 19   .

LA SALLE NATIONAL BANK, as  
Agent under the Participation  
Agreement,

By: \_\_\_\_\_  
Authorized Officer

INQUIRY SHOULD BE MADE TO THE AGENT  
IF CERTIFICATION AS TO BALANCE DUE HEREUNDER IS REQUIRED.